

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,

Plaintiff,

v.

KRINER'S DINER, LLC, et al.,

Defendants.

BY _____
DEPUTY CLERK

Case No. 3AN-20-07394CI

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
TEMPORARY INJUNCTION**

KRINER'S DINER, LLC, ANDREW KRINER, and NORANN KRINER
(hereinafter "Kriner's") by and through the Law Offices of Blake Fulton Quackenbush,
opposes the Municipality of Anchorage's (hereinafter "MOA") *Motion for Temporary
Injunction*.

FACTS

Kriner's Diner has been serving comfort food in Anchorage since practically time
immemorial. Kriner's Diner is as "Alaskan" as Benny Benson. It has survived crises like
the 2018 earthquake, and COVID-19 should be no exception.

On July 28, 2020, the Anchorage Assembly extended Anchorage Mayor Ethan
Berkowitz's Proclamation of Emergency until October 16, 2020.

On July 31, 2020, the EO-15 was instituted, and it was to remain in effect until
11:59 PM on August 30, 2020.

The MOA claims without support that the number of COVID-19 cases has
exceeded the Anchorage Health Department's capacity to rapidly trace and monitor every

known case.¹ The MOA also claims that the Emergency Order (“EO-15”), signed by Anchorage Mayor Ethan Berkowitz and includes a “four-week reset,” was aimed at limiting spread of the virus “by targeting the specific situations and behaviors that science has indicated are most likely to spread COVID-19 to large numbers of individuals: large gatherings of people in close proximity, especially indoors.”²

Nevertheless, Anchorage Health Department (“AHD”) lists on its regularly updated website the locations where all persons likely came into close contact with an infected person—even locations where AHD is unable to contact all persons who likely came into close contact with an infected person, and even lists locations when AHD lacks capacity to conduct the contact tracing in a timely manner. Kriner’s Diner is not listed as such a location.

According to the AHD, between July 27, 2020 and August 6, 2020, “[n]o current locations” were found by the AHD in which persons who were infected with COVID-19 spent extended time.³ Specifically, Kriner’s Diner was not listed by AHD as a location in which any person who was infected with COVID-19 spent extended time between at least July 27, 2020 and August 6, 2020.⁴

¹ *Motion and Memorandum in Support of Temporary Injunction* 4-5 (Aug. 5, 2020).

² *Motion and Memorandum in Support of Temporary Injunction* 5 (Aug. 5, 2020).

³ *Exhibit A, attached hereto.*

⁴ *Aff. of Andrew Kriner* ¶ 7 (Aug. 6, 2020).

Despite the foregoing, on August 4, 2020 at 11:08 AM, the MOA served a “Stop Work” order on Defendants, which mandated that “the outdoor areas of the restaurants and breweries are limited to table service, with each table 10-feet apart or greater, as measured edge to edge.”⁵

On August 5, 2020, the Plaintiff served a “Stop Work” order on Kriner’s Diner, LLC, which commanded the Kriner’s to “immediately close the restaurant to indoor dining.”⁶ The Kriner’s were ordered to stop indoor dining because the MOA claims that “all restaurants and breweries are closed to indoor dining,”⁷ even though evidence proves otherwise. The terms “indoor dining” are not defined.

ARGUMENT

I. EQUAL PROTECTION

The Plaintiff’s *Motion for Temporary Injunction* should be denied because it rests entirely on the validity of EO-15, which is unconstitutional under of Article I, Section 1 of the Alaska Constitution. The Kriner’s constitutional right to seek and obtain employment in their profession has been unlawfully impaired through EO-15, and the MOA’s enforcement of EO-15. The right to employment has been consistently deemed an important right in the State of Alaska, warranting close scrutiny of enactments that encroach upon it. Though the MOA’s underlying interest in quelling the spread of

⁵ Plaintiff’s Exhibit 3, p. 1.

⁶ Plaintiff’s Exhibit 4, p. 2.

⁷ *Motion and Memorandum in Support of Temporary Injunction* 7-8 (Aug. 5, 2020).

COVID-19 is important, the MOA has failed to enact and enforce EO-15 in a way that creates a nexus to the underlying interest in a constitutional manner.

Although the MOA has broad authority in the midst of a state of emergency, this authority does not prevail over the principles enumerated in the Alaska Constitution.

Article I, Section 1 of the Alaska Constitution provides:

[...] all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.”⁸

A. Similarly Situated Individuals / Class

The threshold requirement to establish a violation of the Equal Protection Clause under Article I, Section 1 of the Alaska Constitution is demonstrating a “differen[ce] [of] treatment of similarly situated individuals,” or in other words, establishing a class that should be equally protected.⁹

- i. **The class of individuals engaged in an employment where people congregate together indoors, where mask-wearing is not feasible and/or where social distancing cannot be observed** ¹⁰

In this case, the MOA targets businesses for closure based on services they provide that create “specific situations and behaviors that science has indicated are most likely to

⁸ Alaska Const. Art. I, § 1

⁹ *Schiel v. Union Oil Co. of California*, 219 P.3d 1025, 1030 (Alaska 2009)(citing *Glover v. State, Dep't of Transp., Alaska Marine Highway Sys.*, 175 P.3d 1240, 1257 (Alaska 2008).

¹⁰ *Motion and Memorandum in Support of Temporary Injunction* 5 ¶ 3 (Aug. 5, 2020).

spread COVID-19.”¹¹ Although the MOA does not cite any scientific studies to support grouping such businesses, the Kriners adopt the MOA grouping of businesses targeted by the MOA as the class for the threshold application of Article I, Section 1 of the Alaska Constitution. For clarity, the Kriner’s adopt the MOA’s description of this business or employment classification including all employment or business “where people congregate together indoors, where mask-wearing is not feasible and/or where social distancing cannot be observed.”¹²

The MOA is not equally applying EO-15 to all class members. For instance, gyms, outdoor dining, and canneries, all pose an equal, if not greater, threat to the community of Anchorage than Kriner’s Diner, yet, no gyms, outdoor dining, or canneries have been asked to stop work and none have been named in a Complaint or the *Motion for Temporary Injunction*.

1. Gyms

A gym poses a credible threat to the community and specifically falls under the same MOA classification of a business in the MOA’s *Motion and Memorandum in Support of Temporary Injunction*.¹³ This is because gyms create situations where people congregate together indoors, and wearing masks is not feasible. The Alaska Club,¹⁴ for

¹¹ *Motion and Memorandum in Support of Temporary Injunction* 5 ¶ 3 (Aug. 5, 2020).

¹² *Motion and Memorandum in Support of Temporary Injunction*, 5 ¶ 3 (Aug. 5, 2020).

¹³ *Motion and Memorandum in Support of Temporary Injunction*, 5 ¶ 3 (Aug. 5, 2020).

¹⁴ Given the short time frame to respond to the MOA’s motion, this Response cannot adequately survey all gyms within Anchorage. However, the Court should be aware of two other gyms with policies akin to the Alaska Club. Planet Fitness, with four locations in Anchorage, has also

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example, with seven facilities located in the Municipality of Anchorage, has implemented COVID-19 procedures with a provision that members are required to wear face coverings “at all times *except when engaged in cardiovascular activities* (cardio equipment, group fitness, racquet sports, swimming, basketball courts.)”¹⁵ [*emphasis added*]. In other words, face masks are required to be worn when feasible, but is not mandatory *when not feasible*.

Although gyms fit squarely within the MOA’s classification of businesses that pose a credible threat to the community, the MOA decisively excluded gyms from EO-15. Furthermore, the MOA has not taken issue with the fact that gyms—like restaurants, such as Kriner’s Diner—have individuals from separate households congregating in groups without mask indoors. Therefore, EO-15 on its face and through its enforcement is treating gyms and Defendants differently although they are part of the same classifications of businesses that pose a scientific threat to the community as defined by the MOA’s *Motion and Memorandum in Support of Temporary Injunction*.

2. Outdoor Dining Institutions

implemented COVID-19 policies, “a mask must be worn at all times, in accordance with local restrictions, in the club (*except while actively working out*)... While you are working out, you do not need to have a mask on.” Exhibit B. Body Renew, with three facilities located in Anchorage, does not have any COVID-19 policies publicly available. They are understood to have a mask-mandate, however, attached as Exhibit C are photos taken inside a Body Renew facility on August 6, 2020, showing many gym goers (1) not social distancing, and (2) not wearing masks.

¹⁵ Exhibit B, The Alaska Club Safety Protocols, Municipality of Anchorage & City of Juneau Only, <https://www.thealaskaclub.com/safety> (July 21, 2020).

Outdoor dining in tents or other forms of enclosed structures also fall under MOA's classification of businesses that pose a credible threat to the community in *Motion and Memorandum in Support of Temporary Injunction*. However, the MOA neglects to distinguish between the various tent type structures employed by dining businesses in Anchorage—that is, tents with weather-proof walls akin to that of an indoor building or whether such tents are inherently less at risk for spreading COVI-19 than indoor dining. Exhibit E shows photographs taken by Trent Quackenbush on August 6, 2020 of businesses in Anchorage which provide outdoor dining in tents as an “alternative” to indoor dining.¹⁶ None of the businesses depicted in Exhibit E, including a business in which the Mayor himself owns an interest, have received the type of unequal treatment under law like the Kriner's. It is frankly absurd to assume that any risks associated with indoor dining are somehow magically alleviated by eating in a tent as opposed to a dining room.

3. Canneries

Canneries and fish packing facilities are responsible for three of Alaska's largest outbreaks, yet canneries do not receive unequal treatment under the law like the Kriner's. The Municipality's “Mayor's Corner” Press release reports that on July 24, 2020, a COVID-19 outbreak occurred at Copper River Seafoods Anchorage Processing Plant, and 54 of the 134 employees working at the Anchorage facility tested positive.¹⁷ As noted in

¹⁶ Exhibit E, attached hereto.

¹⁷ Exhibit F, attached hereto.

the press release, “[w]ith so many workers testing positive, it is likely that this outbreak has been in progress for some time and that transmission has already occurred among family, friends, and others in the community.”¹⁸ Kriner’s Diner has had no reported outbreaks and not one positive test associated with anyone who has spent any appreciable amount of time in Kriner’s Diner,¹⁹ and yet, the MOA has seen fit to give Kriner’s unequal treatment under the law.

Based on the foregoing examples, the MOA establishes a rigid classification of businesses that pose a credible threat to the community, and “where people congregate together indoors, where mask-wearing is not feasible and/or where social distancing cannot be observed.”²⁰ However, the enactment and enforcement of EO-15 treats members of this class differently by allowing gyms and outdoor dining in structures to remain open while the MOA takes disparate action against indoor businesses like Kriner’s Diner.

B. Three-Step Sliding Scale of Review

Because there is disparate treatment by the MOA between Kriner’s and the other members of the class, the threshold showing of disparate treatment has been satisfied. This enables this Court to utilize the three-step “‘sliding scale of review’ rather than the tiered approach of federal equal protection analysis” to determine if EO-15 and its

¹⁸ *Exhibit F, attached hereto.*

¹⁹ *Aff. of Andrew Kriner* ¶ 5 (Aug. 7, 2020).

²⁰ *Motion and Memorandum in Support of Temporary Injunction* 5 ¶ 3 (Aug. 5, 2020).

enforcement is a violation under Article I, Section 1 of the Alaska Constitution.²¹ In applying the review, the Court

place[s] a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, [the court] determine the weight of the individual interest impaired by the classification; second [the court] examine[s] the importance of the purposes underlying the government's action; and third, [the court] evaluate[s] the means employed to further those goals to determine the closeness of the means-to-end fit.²²

i. Step 1: Defendant's Right to Employment Impaired by EO-15 and its Enforcement

The individual interests at stake in this case are Kriner's right to employment, which includes the right to work in a particular industry. Andrew Kriner and Norann Kriner are local entrepreneurs and the sole owners of Kriner's Diner, LLC, with each respectively holding 50% of the shares.²³ Given the closely held nature of the shares in Kriner's Diner, LLC, Andrew Kriner and Norann Kriner's employment opportunity is inseparable from that of the ability to operate Kriner's Diner, LLC.

²¹ *Wilkerson v. State, Dep't of Health & Soc. Servs., Div. of Family & Youth Servs.*, 993 P.2d 1018, 1022-23 (Alaska 1999) ("In applying the sliding scale approach, we have noted that the Alaska Constitution 'often affords greater protection to individual rights than that provided by the federal constitution.'").

²² *Malabed v. N. Slope Borough*, 70 P.3d 416, 420-21 (Alaska 2003).

²³ Exhibit G, attached hereto.

Historically, in Alaska, the “right to employment” has been considered “an important right.”²⁴ This right of employment extends beyond merely a job but to “the right to engage in an economic endeavor within a particular industry.”²⁵ Further, this Court does not have to find a “total deprivation of employment” due to EO-15 or its enforcement for there to be a violation of Equal Protection clause under Article I, Section 1 of the Alaska Constitution.²⁶ Any enactment that infringes the right to employment warrants “close scrutiny” whereby “the state’s interest underlying the enactment [must] be not only legitimate, but important, and that the nexus between the enactment and the important interest it serves be close.”²⁷

The unequal enforcement of EO-15, in effect, impairs Andrew Kriner and Norann Kriner’s “right to seek and obtain employment in [their] profession” by forcing them to close their local business. However, other business owners in their class remain fully open to the public.²⁸ The EO-15 specifically targets and impairs these rights through unequal treatment under the law.

²⁴ *Malabed*, 70 P.3d at 421.

²⁵ *State, By & Through Departments of Transp. & Labor v. Enserch Alaska Const., Inc.*, 787 P.2d 624, 632 (Alaska 1989)(citing *Commercial Fisheries Entry Comm’n v. Apokedak*, 606 P.2d 1255, 1266 (Alaska 1980)).

²⁶ *State, By & Through Departments of Transp. & Labor v. Enserch Alaska Const., Inc.*, 787 P.2d 624, 633 (Alaska 1989)(citing *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1267 (Alaska 1980) (“[although] the restriction on employment opportunities may not be total [this] does not diminish the importance of the right asserted.”). The employment preference in *Enserch* effected “at least fifty percent of the positions available in a particular craft.” *Id.*

²⁷ *Malabed*, 70 P.3d at 421.

²⁸ *Malabed*, 70 P.3d at 421.

EO-15's unequal application is analogous to "hiring preferences" that have consistently been held to violate Equal Protection Clause under Article I, Section 1 of the Alaska Constitution.²⁹ EO-15's deprivation of Andrew and Norann's employment does not have to be a "total deprivation of employment" for a violation of Equal Protection under Article I, Section 1 of the Alaska Constitution.³⁰

Given the Kriner's right to employment being intentionally affected by EO-15, the court should apply close scrutiny to EO-15.

ii. Step 2: Importance and legitimacy of MOA interest in slowing the spread of COVID-19

The MOA has an important interest in slowing the spread of COVID-19 and slowing the spread of COVID-19 is a legitimate interest.

iii. Step 3: The MOA Enactment and Enforcement Does Not Create a Nexus to Achieve the MOA's Interest in Slowing the Spread of COVID-19.

Although slowing the spread of COVID-19 is an important and legitimate reason for the MOA to implement restrictions through emergency orders, the fit between EO-15 and the MOA's means are insufficiently close. This is because, as discussed above, the

²⁹*Id.*; *State, By & Through Departments of Transp. & Labor*, 787 P.2d at 624. (Upholding "unconstitutionality of regional preference law" under the Equal Protection Clause under Article I, Section 1 of the Alaska Constitution for "economically distressed zones").

³⁰ *State, By & Through Departments of Transp. & Labor*, 787 P.2d at 633 (citing *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1267 (Alaska 1980) ("[although] the restriction on employment opportunities may not be total [this] does not diminish the importance of the right asserted."). The employment preference in *Enserch* effected "at least fifty percent of the positions available in a particular craft." *Id.*

EO-15 is insufficiently tailored to address the “super spreader events” it cites in the *Motion for Temporary Injunction*, and there is a massive disparity in the treatment of members of the same class.

II. PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE DENIED

Plaintiff “may obtain a preliminary injunction by meeting either the balance of hardships or the probable success on the merits standard.”³¹ The showing required to obtain a preliminary injunction depends on the nature of the threatened injury. If the plaintiff faces the danger of “irreparable harm” and if the opposing party is adequately protected, then we apply a “balance of hardships” approach in which the plaintiff “must raise ‘serious’ and substantial questions going to the merits of the case; that is, the issues raised cannot be ‘frivolous or obviously without merit.’ ”³² “If, however, the plaintiff’s threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then we demand of the plaintiff the heightened standard of a “clear showing of probable success on the merits.”³³

³¹ *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (citing *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 540 (Alaska 1970), *modified in other respects*, 483 P.2d 198 (Alaska 1971)). The Court adopted the balance of hardships standard as an alternative to the rule “requiring a clear showing of probable success” on the merits. *Id.*)

³² *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273 (Alaska 1992) (citations omitted).

³³ *Id.* at 1272 (quoting *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 540 (Alaska 1970), *modified in other respects*, 483 P.2d 198 (Alaska 1971)).

A. Balance of Hardship Standard.

The balance of hardships standard requires balancing the harm the plaintiff will suffer without the injunction against the harm the injunction will impose on the defendant.³⁴ A preliminary injunction is warranted under the balance of hardships standard when three factors are present:

- (1) the plaintiff must be faced with irreparable harm;
- (2) the opposing party must be adequately protected; and
- (3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit.³⁵

i. The MOA has not established its burden of proving certain and irreparable harm.

The injury suffered by the Kriner's is substantial when compared to the unsupported allegations proffered by the MOA. The MOA has proffered no evidence that the Kriner's business practices have contributed in any way to the spread of COVID-19. The MOA argues that the injunction is "medically necessary for the health of our entire community[.]" but the MOA provides no scientific evidence substantiating the need to enjoin the Kriner's from carrying on normal, safe, business practices.³⁶ The MOA

³⁴ *Alsworth v. Seybert*, 323 P.3d 47, 58 (Alaska 2014).

³⁵ *Kluti Kaah*, 831 P.2d at 1273 (quoting *Messerli v. Dep't of Natural Res.*, 768 P.2d 1112, 1122 (Alaska 1989)) (internal quotation marks omitted).

³⁶ *Motion and Memorandum in Support of Temporary Injunction* 11 (Aug. 5, 2020).

attempts to justify its argument for irreparable harm with fallacious, circular reasoning. The MOA essentially argues that enjoining the Kriner's is necessary because it is necessary. The MOA fails to support with actual evidence a causal connection between indoor dining at Kriner's and transmission of COVID-19. In fact, the MOA has proffered no evidence showing certain and irreparable harm to the MOA by Kriner's or harm to restaurants similar to Kriner's.

The MOA erroneously argues that "[t]he ordinance follows the science, reflecting that, based on the current date about the status of this disease in Alaska, indoor bar and restaurant operations cannot be open safely at this time in the Municipality of Anchorage."³⁷ First, Kriner's is not a bar and restaurant; it is simply a restaurant, and merely repeating the word "science" is not itself scientific evidence. The MOA motion is completely devoid of actual science and scientific evidence (no reports, no graphs, no expert opinions—just the unsupported assertions of attorneys).³⁸ The MOA loosely refers to "data" without providing any at all.³⁹ The MOA provides no evidence that supports the argument that COVID-19 spreads well indoors at a family restaurant that does not serve alcohol.

In terms of actual science and statistics, between July 27, 2020 and August 6, 2020, the AHD reported that "[n]o current locations" were found by the AHD in which persons

³⁷ *Motion and Memorandum in Support of Temporary Injunction* 11 (Aug. 5, 2020).

³⁸ *Motion and Memorandum in Support of Temporary Injunction* 11 (Aug. 5, 2020).

³⁹ *Motion and Memorandum in Support of Temporary Injunction* 11 (Aug. 5, 2020).

who were infected with COVID-19 spent extended time. Specifically, Kriner's Diner was not listed by AHD as a location in which any person who was infected with COVID-19 between July 27, 2020 and August 6, 2020.⁴⁰ The mayor's EO-15 was issued on July 31, 2020, which is during a time when the AHD reported no current locations.

ii. The Kriner's are not adequately protected by the preliminary injunction.

The balance of hardships standard

[...] applies only where the injury which will result from the temporary restraining order or the preliminary injunction can be indemnified by a bond or where it is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted. Where the injury which will result from the temporary restraining order or the preliminary injunction is not inconsiderable and may not be adequately indemnified by a bond, a showing of probable success on the merits is required [...].⁴¹

The MOA has not posted a bond, and a bond of at least \$1,200,000 is necessary to adequately indemnify the Kriner's.⁴² Additionally, an injunction would completely halt all business at Kriner's Dinner because the type of restaurant and location next to a busy three-lane road on C Street prohibit the Kriner's from maintaining business operations outdoors during summer and especially during an Alaskan winter. The course of the COVID-19 pandemic has shown that this problem will not end any time soon.

⁴⁰ **Exhibit A**, attached hereto.

⁴¹ *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378–79 (Alaska 1991) (citations omitted) (citing *A.J. Indus.*, 470 P.2d at 540; *Alaska Pub. Utils. Comm'n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975)).

⁴² *Aff. of Andrew Kriner* ¶ 6 (Aug. 7, 2020).

It is also a completely ludicrous assertion by the MOA that the “pandemic presents a sufficiently serious imminent public health risk that would still permit the Municipality to close Kriner’s Diner entirely.”⁴³ Kriner’s Diner is not the only restaurant of its kind in Anchorage, and the economic costs and subsequent societal ills associated with toppling the bulk of the Anchorage food service industry because of unmitigated fear is frankly far worse when compared to the probability actually catching COVID-19 and suffering permanent injury.

iii. The plaintiff fails to raise serious and substantial questions going to the merits of the case, and the issues raised are frivolous and obviously without merit.

The MOA’s argument on page 14, first paragraph, of the *Motion for a Temporary Injunction* appears to be incomplete. The last sentence of the first paragraph simply trails off without a conclusion.

The MOA is unreasonable in its enforcement because the EO-15 is unconstitutional (as discussed elsewhere) because enforcement violates the Kriner’s rights to equal protection under the law.

B. Probable success on the merits standard

If the MOA’s alleged harm by not granting the injunction is determined by this court to be less than irreparable or if the court determines that the Kriner’s cannot be

⁴³ *Motion and Memorandum in Support of Temporary Injunction* 11 (Aug. 5, 2020).

adequately protected, then Alaska law requires the MOA to satisfy the heightened standard of a “clear showing of probable success on the merits.”⁴⁴

The MOA erroneously claims, “it is not necessary to demonstrate that there is a clear probability of success of the merits.”⁴⁵ That simply is not Alaska law. Regardless, the EO-15 is unconstitutional (as discussed herein) because it violates the Kriner’s rights to equal protection under the law.

CONCLUSION

Based on the facts and evidence presented herein, the Kriner’s respectfully request that the court deny the MOA’s request for a temporary injunction.

DATED this 7th day of August 2020 at Anchorage, Alaska.

LAW OFFICES OF
BLAKE FULTON QUACKENBUSH
Attorney for Kriner’s Diner LLC



BLAKE F. QUACKENBUSH, ESQ.
ALASKA BAR NO. 1405040

⁴⁴ See *State, Dep't of Fish & Game v. Pinnell*, 461 P.2d 429, 432 & n. 8 (Alaska 1969).

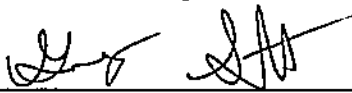
⁴⁵ Motion for TRO 14 (Aug. 5, 2020).

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CERTIFICATE OF SERVICE

Undersigned hereby certifies that on 08/07, 2020 a true and correct copy of this document was served by: ☒ USPS 1st Class Mail; ☒ E-Mail; Fax; Messenger; and/or ☐ Hand Delivery to the following recipient(s):

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By: 
GREGORY STEWART
Legal Assistant

CONFIRMED COVID-19 EXPOSURE LOCATIONS

The Anchorage Health Department has confirmed that persons who were infectious with COVID-19 spent extended time in the following locations during the past 10 days on the dates specified. We are concerned that the person with COVID-19 may have transmitted the virus to others in close contact at the location. We have been unable to identify and contact everyone who may have had close contact with the infectious person at the location and who may be at risk of becoming sick.

No current locations.

IF YOU WERE IN A LOCATION ON A DATE LISTED:

- Stay away from people who are at higher risk for getting very sick from COVID-19.
- Watch for symptoms and check your temperature twice a day for 14 days after you were in one of the businesses during the dates listed above.
 - Symptoms, which can start up to 14 days after exposure, can include fever or chills, cough, shortness of breath or difficulty breathing, chest pressure or tightness, fatigue, muscle or body aches, headache, loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.
- If you develop any of these symptoms, stay home, except to get tested as soon as possible. Information on testing in Anchorage and the rest of Alaska is available here.
 - You may be infectious to others for two days BEFORE and 10 days AFTER you get sick. Do not go to work or public places. You can easily spread COVID-19 before you feel any symptoms.
 - For more detailed instructions, see CDC's What To Do If You Are Sick

AHD does not list informal gatherings. Some people confirmed to have COVID-19 did not share or remember all of their close contacts or public places they visited. Additionally, it typically takes 2-7 days before our team is able to learn where potential exposures have occurred.

Community members can help our public health nursing team by keeping a contact log, noting the days and times of the places visited and the people they came in contact with. The contact log helps with contact tracing in the event you become sick with COVID-19.

For more information, call 2-1-1 or visit www.muni.org/COVID-19.

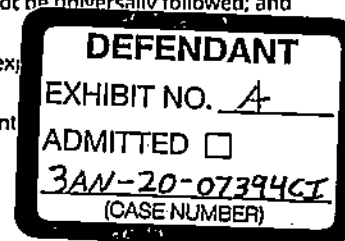
Locations in which no further cases have been identified within the last 10 days are removed from the list.

AHD PROCESS FOR PUBLIC NOTIFICATION OF COVID-19 EXPOSURE LOCATIONS

Anyone in close contact with someone who has COVID-19 is at increased risk of becoming infected and infecting others. Contact tracing helps prevent further transmission by quickly identifying and informing people who may be infected so they can take steps to not infect others.

An exposure location rises to the level of a public notification when a person with COVID-19 spends more than 15 minutes, while infectious in an indoor space, in which:

- More than 10 people other than household members were present;
 - Physical distancing and wearing of face coverings were not or could not be universally followed; and
 - All people at the location cannot be identified or contacted because:
 - the location did not maintain a log of everyone present during the exposure
 - the location log is illegible or incomplete
 - the person with COVID-19 is unable or unwilling to identify close contacts
- Or -



- If AHD lacks capacity to conduct the contact tracing in a timely manner.

When an exposure location of concern is identified, AHD:

- Calls the location and notifies them of the date(s) the exposure occurred.
- Informs the location that they will receive a letter with CDC sanitization instructions and an "exposure notice" sign. The sign must be displayed in a visible area.
- Asks the location if a log of the names and phone numbers of everyone present during the exposure period, per the Municipality's Phase 3 reopening guidelines, was maintained. If a log was maintained, AHD requests a copy to assist with contact tracing.
 - If a complete and legible log was maintained that does not exceed contact tracing capacity, a public exposure notification may not be required.
- Informs the location whether a public exposure notification will be posted to reach all exposed customers at risk of infection.

AHD lists locations where it is unable to contact all persons who likely came into close contact with an infectious person, or if AHD lacks capacity to conduct the contact tracing in a timely manner. COVID-19 exposures can happen even when a location follows all recommended guidelines.



August 3, 2020

Municipality Of Anchorage - Emergency Order E-015:

Effective Monday, August 3, 2020

After review of the new emergency order, and how it affects our current member usage, we have determined that it will have little to no impact on the way you use our facilities. We will remain OPEN and continue to operate in the safest and healthiest manner.

We are already limiting rooms by occupancy and most areas fall within a 15-person capacity limit. We will make slight modifications where appropriate. Please reference the room occupancy signs for capacities when entering a new room or space in the facility.

One more benefit of being a member at The Alaska Club means more space and more options to stay healthy and active.

July 21, 2020

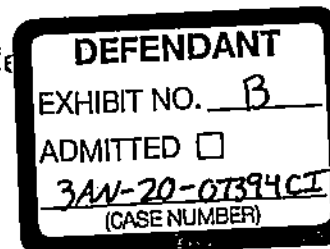
Municipality of Anchorage & City of Juneau Only:

Members are required to wear face coverings, as recommended by the CDC, at all times when in the club except when engaged in cardiovascular exercise (cardio equipment only). Face coverings must be worn while walking on the path, in the gym, and in the lounge.

You will not be permitted entrance without a face covering.

Help us keep everyone safe and businesses open.

Face coverings are optional at the Outdoor Pavilions available East, Eagle River & South.



East, Eagle River &

What To Expect During Your Visit



Entry Screening

Members and staff will be asked to have a noninvasive temperature check utilizing thermal body temperature.

- Any person with a temperature above 100.4°F will not be granted entry
- Any person with COVID-19 symptoms will not be granted entry



Face Coverings

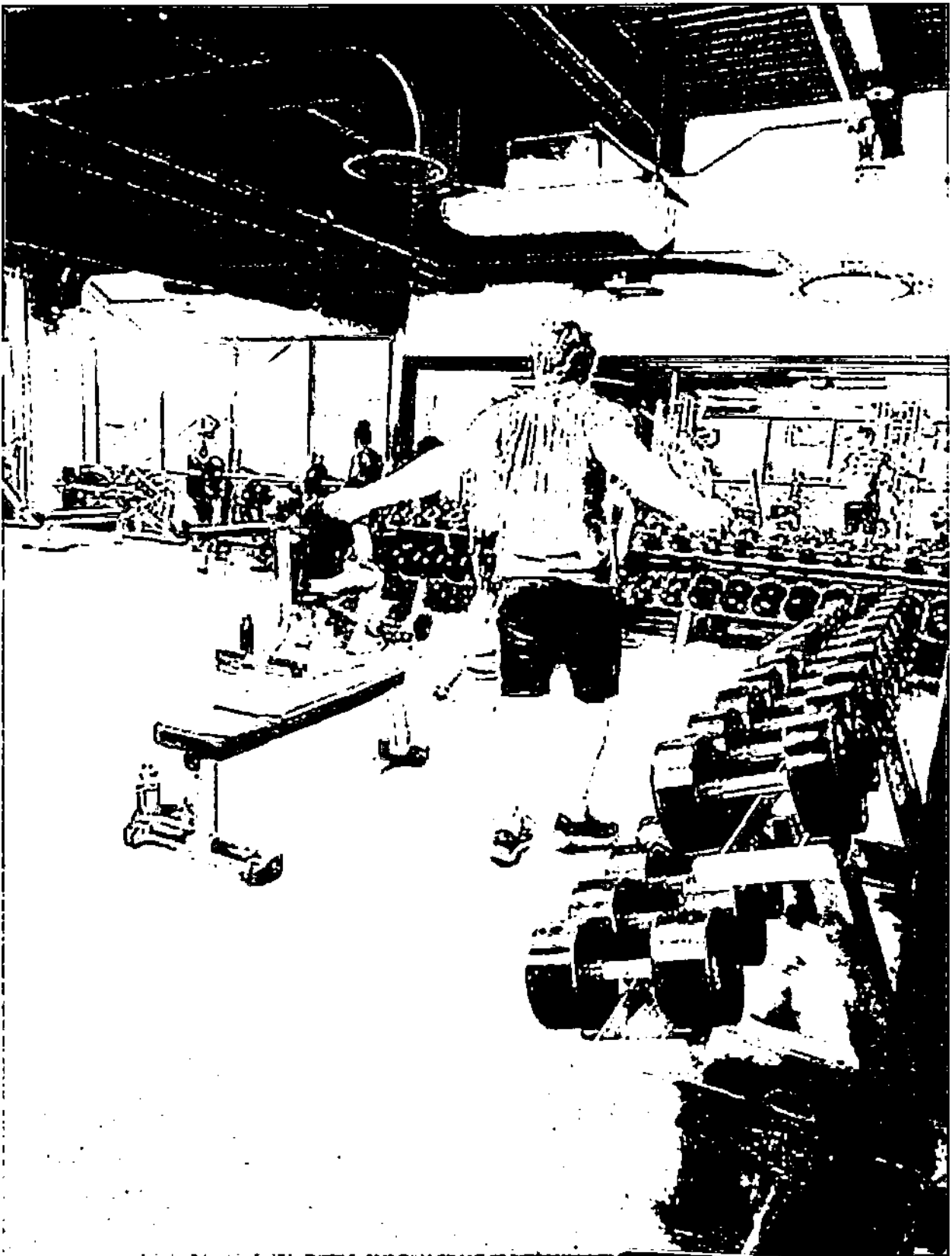
- Team members are required to wear face coverings
- Members in MOA & Juneau are required to wear face coverings, as recommended by the CDC, at all times when in the club except when engaged in cardiovascular exercise (e.g. equipment group fitness, aerobics, sports, swimming, basketball courts). **You will not be permitted entrance without a face covering.**
- Kids using the play center do not have to wear face coverings. Face coverings are optional in the play center. Staff is required to wear them in the play center.
- Every member of our cleaning team is required to wear face covering and gloves



Social Distancing

Our facilities have been reconfigured to optimize space for physical distancing:

- Building occupancy will be reduced in accordance with state and local mandates
- Limited capacities have been established for each area of the club to help with distancing
- Our floors are marked to help members and staff identify appropriate distances
- Equipment is tagged out to ensure space between users in our cardio areas
- Furniture in social spaces was removed to discourage gathering
- Social distancing measures are in place in all areas of the facilities



DEFENDANT

EXHIBIT NO. C

ADMITTED ☐

3AN-20-07394CT
(CASE NUMBER)

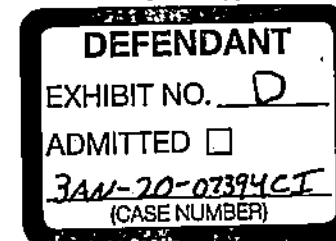
UPDATE ON PLANET FITNESS' MASK POLICY

What is Planet Fitness' mask policy?

+

Your health and safety is our #1 priority, and we're committed to keeping our clubs clean and safe. For the enhanced safety of our members, guests and team members, masks are now required except while actively working out, and in accordance with local restrictions, in all Planet Fitness locations worldwide, effective August 1, 2020. This means that a mask must be worn at all times, and in accordance with local restrictions, in the club (except while actively working out) including when entering and exiting the facility, in between machines and exercises on the gym floor, cleaning, and while in the locker room and NOT behind a private enclosure such as a shower or tanning room. While you are actively working out, you do not need to have a mask on.

Wearing a mask in public is proven to help reduce the spread of COVID-19, and as a leader in the fitness industry, and your long-term partner in health and wellness, we are committed to doing everything in our power to ensure the health and safety of our Planet Fitness community. Thank you in advance for your support and adherence to this policy. This added safety precaution also helps us to remain open to serve you and keep you healthy and active.



Page 1 of 1



DEFENDANT

EXHIBIT NO. E

ADMITTED ☐

3AN-20-07394CI
(CASE NUMBER)

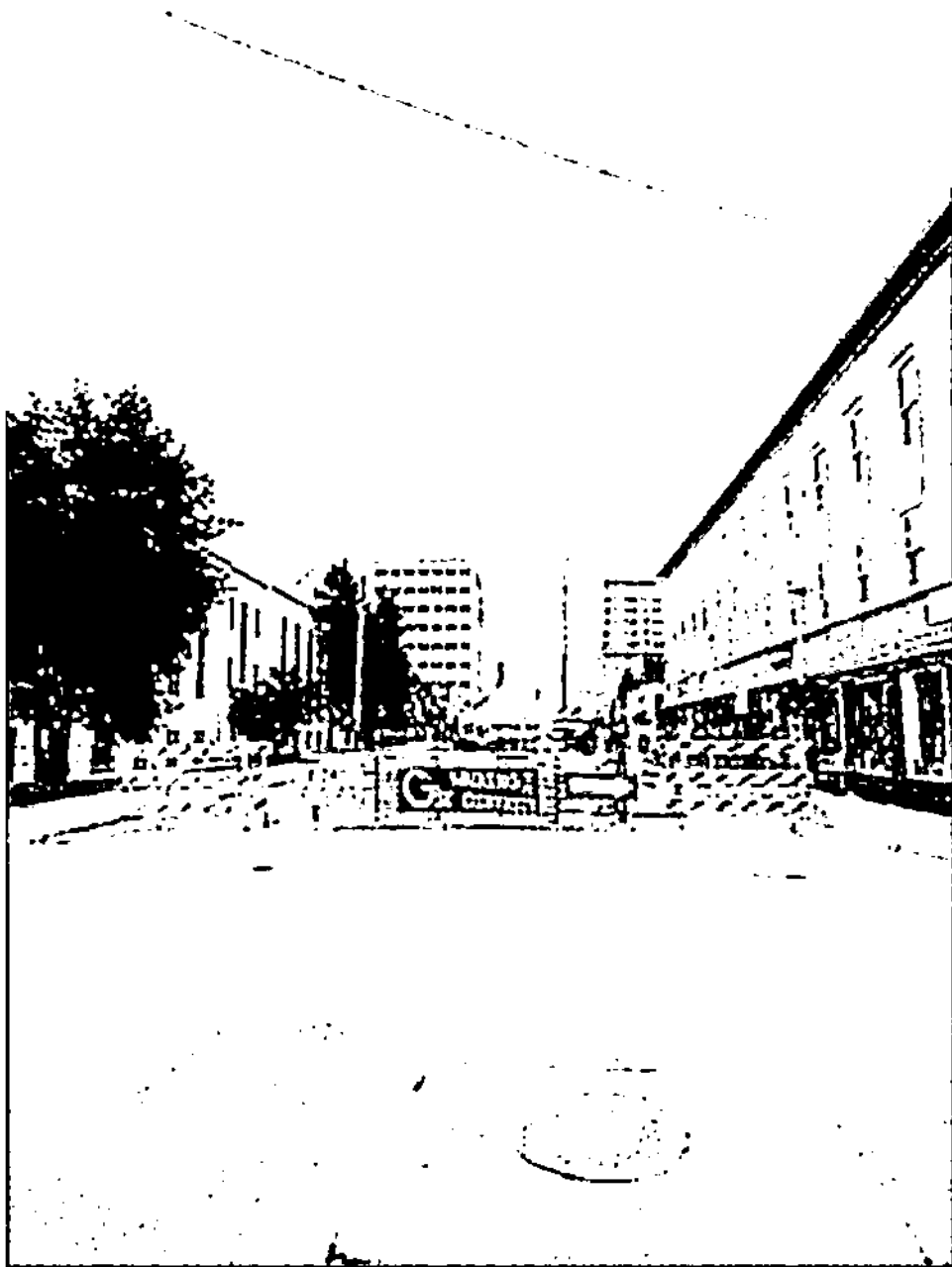
















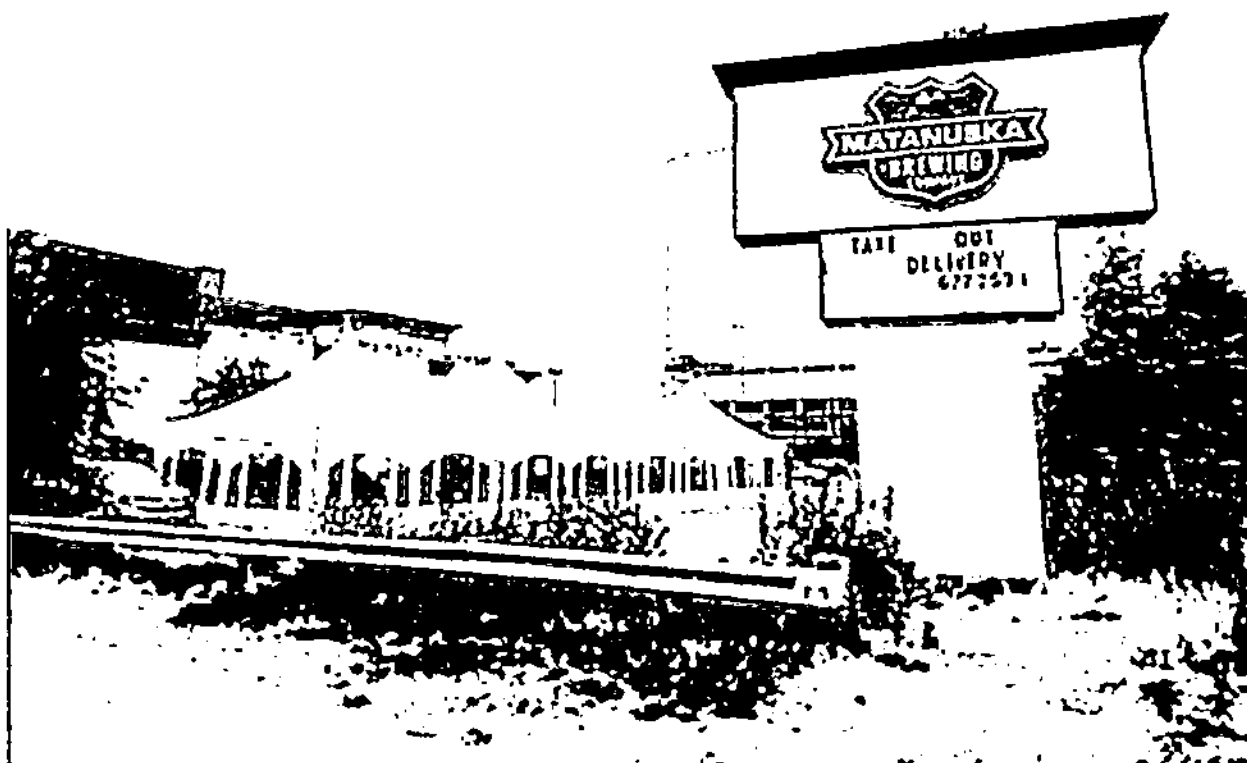






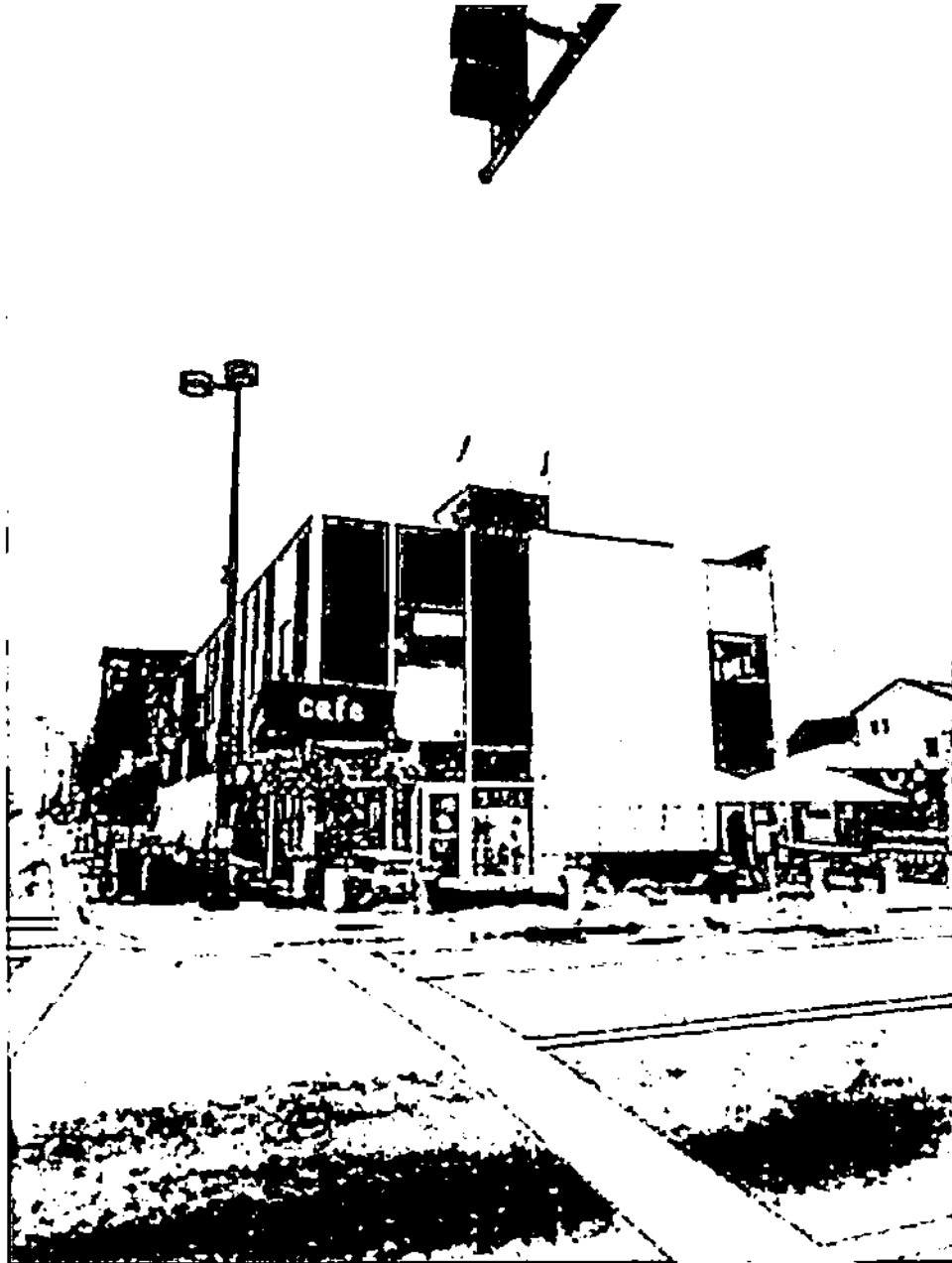














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Statement on Confirmed COVID-19 Cases within AHD

7/25/2020

Seafood processing plant in Anchorage responding to COVID-19 outbreak

7/24/2020

Mayor announces new Anchorage Health Department Director

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Mayor issues Emergency Order EO-14

7/22/2020

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Mayor issues statement about Anchorage's increase in COVID-19 cases

7/13/2020

View all

Seafood processing plant in Anchorage responding to COVID-19 outbreak

7/24/2020

Health Department

ANCHORAGE – Testing of employees at the Copper River Seafoods' (CRS) Anchorage processing plant from July 17 to 22, 2020 found 56 of 134 employees tested positive for COVID-19. Thirty employee test results are pending, and 14 employees are untested. Almost all employees are Municipality of Anchorage residents.

Employees with positive test results are being notified and instructed to follow [CDC isolation protocols](#).

"This is a concerning situation for the people of Anchorage," said Dr. Bruce Chandler, the Anchorage Health Department's chief medical officer. "With so many workers now testing positive, it is likely that this outbreak has been in progress for some time and that transmission has already occurred among family, friends and others in the community."

CRS is working with the Anchorage Health Department (AHD) and State of Alaska Department of Health & Social Services (DHSS) to control this outbreak as quickly as possible and prevent further spread of the disease among co-workers, family members and the community. Contact tracing is being initiated by AHD and the DHSS Section of Epidemiology.

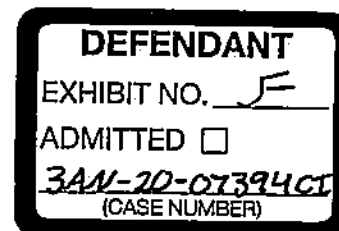
Employees who tested negative will remain under quarantine where they will be monitored and tested every three days until no additional positive cases are identified. All employees with negative tests and household members of identified cases are considered to be close contacts and are being instructed to follow [CDC recommendations](#) for quarantine and self-monitoring.

After the first case was identified, the company closed the facility to undergo deep cleaning and disinfection according to the Centers for Disease Control and Prevention guidance.

Given the rising cases and community transmission now occurring in Alaska, Anchorage residents are encouraged to keep 6 feet from non-household members, wear a mask or cloth face covering in public settings, wash your hands often, avoid large gatherings, and keep your social bubble small. Anyone who feels even mildly ill is encouraged to get tested. If you test positive, please contact your own close contacts if you can, to minimize the time those people might be out in the community, potentially exposing others.

###

Media contact: Barry Piser, Public Information Officer, Anchorage Health Department, barry.piser@anchorageak.gov





THE STATE of ALASKA

Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806
(907) 465-2550 • Email: corporations@alaska.gov
Website: corporations.alaska.gov

FOR DIVISION USE ONLY

Domestic Limited Liability Company

2020 Biennial Report
For the period ending December 31, 2019

Web-2/5/2020 3:47:52 PM

Due Date: This report along with its fees are due by January 2, 2020

Fees: If postmarked before February 2, 2020, the fee is \$100.00.

If postmarked on or after February 2, 2020 then this report is delinquent and the fee is \$137.50.

Entity Name: Kriner's Diner, LLC

Entity Number: 130963

Home Country: UNITED STATES

Home State/Prov.: ALASKA

Physical Address: 2409 C STREET, ANCHORAGE, AK 99503

Mailing Address: 2409 C STREET, ANCHORAGE, AK 99503

Registered Agent information cannot be changed on this form. Per Alaska Statutes, to update or change the Registered Agent information this entity must submit the Statement of Change form for this entity type along with its filing fee.

Name: Andrew Kriner

Physical Address: 2550 MELVIN AVE, ANCHORAGE, AK 99517

Mailing Address: 2550 MELVIN AVE, ANCHORAGE, AK 99517

Officials: The following is a complete list of officials who will be on record as a result of this filing.

- **Provide all officials and required information. Use only the titles provided.**
- **Mandatory Members:** this entity must have at least one (1) Member. A Member must own a %. In addition, this entity must provide all Members who own 5% or more of the entity. A Member may be an individual or another entity.
- **Manager:** If the entity is manager managed (per its articles or amendment) then there must be at least (1) Manager provided. A Manager may be a Member if the Manager also owns a % of the entity.

Full Legal Name	Complete Mailing Address	% Owned	Member
Andrew Kriner	3620 W 41ST AVE, ANCHORAGE, AK 99517	50.00	X
Norann Kriner	3620 W 41ST AVE, ANCHORAGE, AK 99517	50.00	X

If necessary, attach a list of additional officers on a separate 8.5 X 11 sheet of paper.

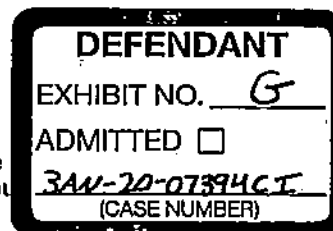
Purpose: Any Lawful

NAICS Code: 722110 - FULL-SERVICE RESTAURANTS

New NAICS Code (optional):

This form is for use by the named entity only. Only persons who are authorized by the changes to it. If you proceed to make changes to this form or any information on it, you

Entity #: 130963



Entity may make of perjury that you

- are authorized to make those changes, and that everything on the form is true and correct. In addition, persons who file documents with the commissioner that are known to the person to be false in material respects are guilty of a class A misdemeanor. Continuation means you have read this and understand it.

Name: Jacquet Curtis



STATE OF ALASKA

PRESS RELEASE

FOR IMMEDIATE RELEASE

Contact: Clinton Bennett, DHSS, 907-269-4996, clinton.bennett@alaska.gov

79 crew members of seafood processing vessel test positive for COVID-19

July 21, 2020 ANCHORAGE – Upon arrival into Dutch Harbor on July 16, crew members of the American Triumph, a seafood processing vessel that is part of the American Seafoods' fleet, were tested for COVID-19 after reporting symptoms of the disease.

Testing of all crew members was conducted by the Iliuliuk Family & Health Services (IFHS) Clinic at the U.S. Coast Guard dock in Dutch Harbor in a safe and secure manner. After all testing was completed July 18, 85 crew members out of a total of 119 tested positive for COVID-19. Six of the 85 had previously tested positive for the virus, so they will not be counted as new cases. None are Alaska residents. Additional cases may be identified among quarantined individuals in the coming weeks.

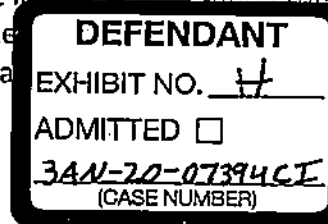
"This is Alaska's largest discrete COVID-19 outbreak to date," said Dr. Joe McLaughlin, Alaska's State Epidemiologist. "The exceptionally high attack rate among crewmembers underscores how efficiently this virus spreads in congregate settings."

All of the crew members have been kept either onboard the vessel or under isolation or quarantine while in Unalaska for medical evaluation. The Unalaska Unified Command has determined the level of risk to the community of Unalaska to be low based on the effective isolation of positive individuals.

Throughout the weekend, American Seafoods, City of Unalaska, IFHS Clinic, City of Seward, Kenai Peninsula Borough, Municipality of Anchorage and the Anchorage Health Department have all been working very closely with the DHSS Section of Epidemiology and Alaska Unified Command on the testing, medical support and logistics of this outbreak. Given the number of crew who tested positive and the limited medical capabilities in Unalaska, the positive crew members remained on the vessel and are being transported to Anchorage for isolation.

Due to the challenges of docking at the Port of Alaska in Anchorage, the vessel will dock in Seward where the crew will then be immediately transferred via ground transportation to Anchorage. Medical staff will accompany the crew to provide medical care and monitoring during the trip from Unalaska to Seward, a route that will allow for any individuals who may require hospitalization to be evacuated directly to Anchorage from the vessel. The crew members who tested negative have already been flown via charter aircraft to Anchorage where they will be monitored in quarantine.

"This has truly been a group effort from many community partners over the past several days," said Dr. Anne Zink, Alaska's Chief Medical Officer. "I appreciate everyone involved in the numerous phone calls, meetings and conversations we've had as we worked through the outbreak with the crew members and the communities of Unalaska, Seward and Anchorage."



American Seafoods is providing a secure isolation location in Anchorage for all crew members to complete their quarantine or isolation periods, which includes medical services, security and any wrap-around support services the crew will need during that period, such as food and other supplies. Crew members will not be allowed to leave their location during their quarantine or isolation periods.

Core strategies to prevent the spread of COVID-19 include the following:

- Stay six feet or more away from non-family members.
- Wash your hands frequently.
- Wipe down surfaces frequently.
- Wear a face covering when in a public setting and in close contact with others.
- Stay home if you are sick and get tested for COVID-19 if you have any symptoms.
- Be mindful and respectful to everyone, including seniors and anyone with existing health conditions who are most vulnerable to this virus.

Stay informed about COVID-19

- Alaska's response
 - Subscribe to DHSS Alerts to receive daily case counts and weekly case summaries via email or text or follow DHSS on Facebook or Twitter
- United States' response
- Global response

###



STATE OF ALASKA

PRESS RELEASE

FOR IMMEDIATE RELEASE

Contact: Clinton Bennett, DHSS, 907-269-4996, clinton.bennett@alaska.gov

Seafood processing plant in Seward responding to COVID-19 outbreak

July 22, 2020 ANCHORAGE – An employee at a seafood processing plant in Seward tested positive for COVID-19 on Sunday. OBI Seafoods, the operator of the plant, with support from the Seward Community Health Center, immediately began testing all 262 of the plant's employees and implemented isolation protocols for its workforce in advance of contact tracing.

The first case was identified when the employee sought medical care at the Providence Seward Medical Center for an unrelated health issue.

With all test results now returned from a commercial lab contracted by the company, 96 employees at the Seward processing facility have tested positive for COVID-19. As part of OBI's Community and Workforce Protective Plan, all employees coming from outside Alaska were tested prior to arrival and twice while in quarantine before being released into the workforce. The company has been operating as a closed campus and all employees who reside in company housing must remain on company property at all times.

Some OBI employees are Seward residents and live off campus. Of those, 11 have tested positive. All of those individuals are currently isolating in their homes but have the option of moving into company housing during isolation. This incident is unrelated to the outbreak aboard the American Triumph, which docked in Seward today so employees could be transported to Anchorage for isolation.

"Alaska is currently experiencing three large, separate outbreaks of COVID-19 in the seafood industry," said Dr. Joe McLaughlin, Alaska's State Epidemiologist. "These outbreaks are reminiscent of the meat packing plant outbreaks in the Lower 48 and stress the importance of vigilant symptom screening and prompt facility-wide testing in congregate work settings when index cases are identified."

OBI is working very closely with the DHSS Division of Public Health, the City of Seward, the community health center, the Anchorage Health Department and other community partners to control the outbreak as quickly as possible and prevent any further spread of the disease.

The company reported that the vast majority of the employees who tested positive say they are not experiencing COVID symptoms. No company employees have been hospitalized due to COVID to date. Employees who tested positive were transported today to Anchorage by private ground transportation and will be isolated in a safe and secure location. OBI will provide all medical care, monitoring, security and housing for the employees. Precautions are being taken during transport and upon arrival to protect the communities of Anchorage and Seward.

Employees who tested negative will remain in Seward under quarantine and tested every three days until no additional positive cases are

DEFENDANT
EXHIBIT NO. <u>I</u>
ADMITTED <input type="checkbox"/>
<u>3AN-20-07394 CI</u>
(CASE NUMBER)

monitored

Contact tracing is being conducted by the Department of Health and Social Services (DHSS) Public Health Nursing but all employees are currently considered to be close contacts. After the first case was identified, the company proactively closed the facility to undergo deep cleaning and disinfection according to the Centers for Disease Control and Prevention guidance.

Stay informed about COVID-19

- Alaska's response
 - Subscribe to DHSS Alerts to receive daily case counts and weekly case summaries via email or text or follow DHSS on Facebook or Twitter
- United States' response
- Global response

###

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,

Plaintiff,

v.

KRINER'S DINER, LLC, et al.,

Defendants.

BY
DEPUTY CLERK

Case No. 3AN-20-07394 CI

AFFIDAVIT OF ANDREW KRINER

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Andrew Kriner, being first duly sworn, depose and state:

1. I am one of three defendants in the above captioned case, and I have personal knowledge of the facts contained herein. If called upon to testify, I would do so according to the facts of this affidavit.

2. Kriner's Diner was not listed by Anchorage Health Department as a location in which any person who was infectious with COVID-19 spent extended time between at least July 27, 2020 and August 6, 2020.

3. Despite the foregoing, on August 4, 2020 at 11:08 AM, the Municipality of Anchorage (hereinafter "MOA") served a "Stop Work" order on Defendants, which mandated that "the outdoor areas of the restaurants and breweries are limited to table service, with each table 10-feet apart or greater, as measured edge to edge."

4. On August 5, 2020, the MOA served a "Stop Work" order on Kriner's Diner, LLC, which commanded the Kriners to "immediately close the restaurant to indoor dining." The Kriners were ordered to stop indoor dining because the MOA claims that "all restaurants and breweries are closed to indoor dining," even though evidence proves otherwise.

5. Kriners has had no reported outbreaks and not one positive test associated with anyone who has spent any appreciable amount of time in Kriner's Diner, and yet, the MOA has seen fit to give the Kriners unequal treatment under the law.

6. \$1,200,000 is the amount necessary to adequately indemnify the Kriner Diner business.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

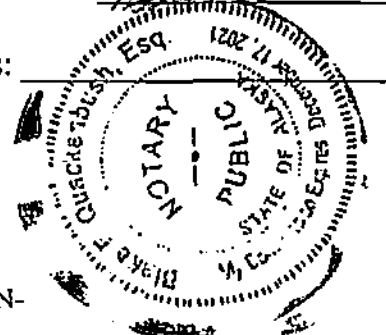
DATED this 7 day of August 2020 at Anchorage, Alaska.


ANDREW KRINER

SUBSCRIBED AND SWORN to before me by 7 day of August 2020
at Anchorage, Alaska.


NOTARY PUBLIC in and for Alaska

My commission expires:



LAW OFFICES OF BLAKE FULTON QUACKENBUSH
807 G Street, Suite 100
Anchorage, Alaska 99501
(907) 868-2780 | Fax (907) 885-0059
blake@BFQLaw.com

CERTIFICATE OF SERVICE

Undersigned hereby certifies that on 08/07, 2020
a true and correct copy of this document was served by:
~~X~~USPS 1st Class Mail; ~~X~~E-Mail; Fax; Messenger;
and/or Hand Delivery to the following recipient(s):

Attn: Ruth Botstein
Attn: Linda Johnson
Municipal Attorney's Office
PO Box 196650
Anchorage AK 99519
Ruth.botstein@anchorageak.gov
Linda.johnson@anchorageak.gov

By: _____


Gregory Stewart
Legal Assistant

AUG -7 2020

LAW OFFICES OF BLAKE FULTON QUACKENBUSH
807 G Street, Suite 100
Anchorage, Alaska 99501
(907) 868-2780 | Fax (907) 885-0059
blake@BFQLaw.com

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MUNICIPALITY OF ANCHORAGE,

Plaintiff,

v.

KRINER'S DINER, LLC, et al.,

Defendants.

Case No. 3AN-20-07394 CI

ORDER DENYING MOTION FOR TEMPORARY INJUNCTION

The Court, having reviewed the pleadings, exhibits and having held a hearing on 08/07/2020 on Plaintiff's Motion for a Temporary Restraining Order, here by orders that the motion is DENIED.

DATED this _____ day of _____ 2020 at Anchorage, Alaska.

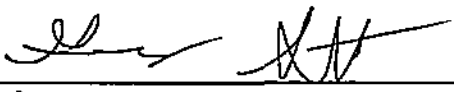
ERICA A. AARSETH
SUPERIOR COURT JUDGE

LAW OFFICES OF BLAKE FULTON QUACKENBUSH
807 G Street, Suite 100
Anchorage, Alaska 99501
(907) 868-2780 | Fax (907) 885-0059
blake@BFQLaw.com

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Municipal Attorney's Office
PO Box 196650
Anchorage AK 99519
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Linda.johnson@anchorageak.gov

By: 
Gregory Stewart
Legal Assistant