

STATE OF NEW MEXICO  
COUNTY OF CURRY  
NINTH JUDICIAL DISTRICT COURT

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9th JUDICIAL DISTRICT COURT  
Curry County  
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CLERK OF THE COURT  
SHELLY BURGER

SID STREBECK; SSET LLC d/b/a K-BOB'S STEAKHOUSE; JIM BURLESON; TERRI CHRISMAN; FRONTIER AUTO, INC.; KATHY DIAZ; CHRISTOPHER & MICHELLE KEMP; BODY & SOL FITNESS, LLC; KEMP'S INVESTMENTS, LLC; SHELLY QUARTIERI; COLFAX TAVERN & DINER, LLC; JOY THOMPSON; and J. JONES MASSAGE,

Plaintiffs,

vs.

Case No. D-905-CV-2020-00233

JUDGE: DAVID P. REEB

MICHELLE LUJAN GRISHAM, in her official capacity as the Governor of New Mexico, MARK R. SHEA, in his official capacity as the Secretary of the New Mexico Department of Public Safety, and KATHYLEEN "KATHY" KUNKEL, in her official capacity as the Secretary of the New Mexico Department of Health,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Plaintiffs, all of whom are small businesses and their owners around the state, allege the following as their Complaint for Declaratory and Injunctive Relief against Defendants Michelle Lujan Grisham ("the Governor"), Mark Shea ("the DPS Secretary"), and Kathyleen "Kathy" Kunkel ("the DOH Secretary").

**THE NATURE OF THE ACTION**

1. In response to the COVID-19 pandemic and purportedly pursuant to her authority under the Public Health Act, NMSA 1978, §§ 24-1-1 to -40, to "close any public place and forbid

gatherings of people when necessary for the protection of the public health,” the DOH Secretary has ordered the closure of most businesses and a dramatic reduction in the in-person workforce of others. NMSA 1978, § 24-1-3(E); *see* N.M. Dep’t of Health Public Health Emergency Order Closing All Businesses and Non-Profit Entities Except for Those Deemed Essential (dated Mar. 23, 2020) (Exhibit 1 to this Complaint) (“Closure Order”); Most Recent Order Amending the Closure Order (dated May 15, 2020) (Exhibit 2 to this Complaint) (“Newest Order”). In enforcing these orders, however, the Defendants have explicitly threatened business owners and operators not merely with the \$100-or-less fines authorized by the Public Health Act, *see* NMSA 1978, § 24-1-21, but with the up-to-\$5,000 civil penalties authorized under a totally different act, the Public Health Emergency Response Act, §§ 12-10A-1 to -19 (“PHERA”); *see id.* § -19 (civil-penalty provision), which pertains only to the *court-ordered* isolation and quarantine of *individuals*, and which does not authorize the closure or mandatory workforce reduction of businesses. The Plaintiffs bring this suit in order to obtain a declaratory judgment about whether the DOH Secretary’s business-closure and -restriction orders are taken under PHERA: if they are not (as Plaintiffs believe to be the case), then the \$5,000 civil-penalty provision is inapplicable; if, in the alternative, PHERA does apply, then the Defendants must “pay just compensation” under PHERA and the Takings Clause for the value lost by business owners as a result of the mandated closures. NMSA 1978, § 12-10A-15(A).

## **THE PARTIES**

2. Sid Strebeck is a resident of Clovis, New Mexico, and owns and operate the K-Bob’s Steakhouse in town through the entity SSET LLC, which is a New Mexico-organized limited liability company (“LLC”). His business has been reduced to takeout only under the

Closure Order and the threats of civil penalties, which continues to cost him tens of thousands of dollars every week.

3. Jim Burlison is a resident of Socorro, New Mexico, and owns and operates an outdoor mercado in the area. On May 1, 2020, he was issued a Uniform Traffic Citation listing § 24-01-21 as the relevant statute, along with a notice threatening a “civil administrative penalty of up to \$5,000,” and a cease-and-desist letter threatening that same penalty and specifically citing § 12-10A-19. *See* Citation, Notice & Cease-and-Desist Letter (dated May 1, 2020) (Exhibits 3A to 3C to this Complaint).

4. Terri Chrisman is a resident of Lovington and an owner and operator of Frontier Auto, Inc., an auto-sale lot incorporated as New Mexico corporation, which has been in Ms. Chrisman’s family for over 40 years and which passed to her following her father’s death in January of this year. Ms. Chrisman’s business has been forced to shut down because, unlike some other car dealerships, hers does not provide servicing (repairs, etc.) for vehicles other than the vehicles owned by the seller and offered for sale. Ms. Chrisman recently opened up her business rather than continue to face the financial ruin associated with remaining shut down.

5. Kathy Diaz is a resident of Albuquerque, New Mexico and the co-owner and operator, along with her husband Miguel Diaz, of Monroe’s Restaurants, which the couple have owned for over 43 years and which has generated only a fraction of its normal revenue since being reduced to takeout-only status by the Closure Order.

6. Christopher and Michelle Kemp are a married couple who reside in Lovington, New Mexico. They own and operate Body & Sol Fitness, LLC, a gym that is a New Mexico-organized LLC, and Kemp’s Investments, LLC, a real estate holding company that is also a New Mexico-organized LLC. Body & Sol, which the Kemps purchased in 2015 and have run profitably

until now, has been shut down completely and has lost all revenue and dues for over a month. When Body & Sol first remained open, Mr. Kemp was served by police with a copy of the Closure Order and orally warned that violations could subject him to \$5,000-per-day fines. Kemp's Investments rents commercial real estate to other small businesses, one of which has already closed down and vacated the premises, leaving substantial unpaid rent, and another of which is struggling to survive while closed but which, with the Kemps' permission, is not actively paying rent.

7. Shelly Quartieri is a resident of Colfax County (Maxwell, New Mexico) and the owner and operator of Colfax Tavern & Diner, LLC, a New Mexico-organized LLC and a bar and restaurant that has been in business since 1929. Her business has been reduced to takeout only by the Closure Order, and at this point it will be difficult for the business to survive even upon reopening.

8. Joy Thompson is a resident of Hobbs, New Mexico, where works at the hospital and owns and operates, on the side, a massage-therapy business called J. Jones Massage. Her business has been closed entirely and she has been unable to engage in massage therapy since the Closure Order, although she still has to pay rent on the office space.

9. The Governor is the chief executive of the State of New Mexico and has issued a number of executive orders relating to the pandemic, including N.M. Executive Order No. 2020-04 (Exhibit 4 to this Complaint), which declared a public health emergency pursuant to NMSA 1978, § 12-10A-5, a declaration that is required in order to trigger many of the other provisions of PHERA.

10. The DOH Secretary issued the Closure Order closing and dramatically reducing the in-person activity of businesses on March 23, 2020, and has since modified that order by way of

subsequent orders issued on April 6, 11, and 30 and May 5 and 15. *See* Closure Order (Ex. 1); Newest Order (Ex. 2).

11. The DPS Secretary has created, on his letterhead, a form cease-and-desist letter threatening business owners with penalties under both NMSA 1978, § 24-1-21 and § 12-10A-17. *See* Cease-and-Desist Letter (Ex. 3C).

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction under § 13 of Article VI of the New Mexico Constitution and the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15.

13. This Court has personal jurisdiction over the Defendants under the New Mexico long-arm statute, NMSA 1978, § 38-1-16.

14. Venue in Curry County is proper under NMSA 1978, § 38-3-1(G), because Mr. Strebeck resides there.

### **LEGAL BACKGROUND**

15. There are multiple statutory sources of emergency powers in the New Mexico Statutes, which are located primarily in the Emergency Powers Code. *See* NMSA 1978, §§ 12-9B-1, -10-1 to -10A-1 to -19, -11-1 to -25 & -12-1 to -30. Relevant to this case, the Defendants have claimed authority under PHERA (Article 10A of Chapter 12) and the Public Health Act (Article 1 of Chapter 24).

#### **I. PHERA**

16. PHERA is a 19-section act that specifically contemplates the use of isolation (segregation of individuals known to be infected) and quarantine (precautionary segregation of

individuals not known to have been infected, but believed to have been exposed) procedures to combat the spread of an infectious disease. *See* NMSA 1978, § 12-10A-3(F) & (I).

17. Although this would seem to make PHERA by far the most obviously applicable set of statutes to the COVID-19 situation, the act's isolation and quarantine provisions appear to be better-suited for a less contagious (lower  $R_e$ ) but more deadly (higher case fatality rate) disease, like, say, the Ebola virus (to use an example that has been in the news in recent years).

18. Most notably, the imposition of mandatory isolation or quarantine on any individual requires the DOH Secretary to "apply for and obtain a written, *ex parte* order from a court that authorizes the isolation or quarantine," NMSA 1978, § 12-10A-7(A), either before imposing the isolation/quarantine or, in exigent circumstances, within 24 hours of doing so, *see* NMSA 1978, § 12-10A-9(B). The person isolated or quarantined then has the right to challenge both the decision itself and the conditions of the isolation or quarantine in court, *see* NMSA 1978, §§ 12-10A-7(D), -10 & -11, and the initial isolation/quarantine order cannot extend "for longer than five days without a court hearing to determine whether isolation or quarantine should continue," *id.* § 12-10A-7(D). Individuals isolated or quarantined have absolute protection from losing their employments due to the order. *See* NMSA 1978, § 12-10A-16.

19. Violations of an isolation or quarantine order are presumably punishable as contempt of court, *see* NMSA 1978, § 12-10A-19(C) (providing that PHERA's civil-penalty provision "is in addition to other remedies available against the same conduct under the common law or other statutes of this state"), but PHERA also provides, in the act's only penalty provision, for a specific monetary sanction:

The secretary of health, the secretary of public safety or the director may enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars (\$5,000) for each violation of that act. A civil administrative penalty may be imposed pursuant to a

written order issued by the secretary of health, the secretary of public safety or the director after a hearing is held in accordance with the rules promulgated pursuant to the provisions of Section 12-10A-17 NMSA 1978.

NMSA 1978, § 12-10A-19(A). The administrative adjudicatory process for assessing these penalties is set forth in NMAC 7.1.30.

20. Although isolation and quarantine powers are not the only powers granted to the Defendants during a public health emergency, this authority (and the procedures that constrain it in order to protect individual liberties) is the subject of the bulk of the act, and the other “[s]pecial powers [available to the Defendants] during a public health emergency” all relate to the commandeering and rationing of health facilities and supplies:

- A. In order to protect the health, safety and welfare of the people in the state during a public health emergency, the secretary of health, in coordination with the secretary of public safety and the director, may:
  - (1) utilize, secure or evacuate health care facilities for public use; and
  - (2) inspect, regulate or ration health care supplies as provided in Subsection B of this section.
- B. If a public health emergency results in a statewide or regional shortage of health care supplies, the secretary of health may control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies.
- C. The state medical investigator, after consultation with the secretary of health, the secretary of public safety, the director and the chair of the board of funeral services, may implement and enforce measures to provide for the safe disposal of human remains that may be reasonable and necessary to respond to a public health emergency. The measures may include special provisions for embalming, burial, cremation, interment, disinterment, transportation and disposal of human remains. To the extent possible, the religious, cultural, family and individual beliefs of a deceased person or of the family of a deceased person shall be considered when disposing of human remains.

NMSA 1978, § 12-10A-6. Nowhere in PHERA is there anything that could be even colorably construed as authorizing the closure or commandeering the operations of non-healthcare-oriented businesses, beyond placing restrictions on the control of their healthcare-supply inventories.

21. PHERA also includes stringent protections for all persons and businesses commandeered or conscripted into action by the State, requiring the State to pay “just compensation,” specifically “includ[ing] lost revenues and expenses incurred,” under the “nonemergency eminent domain procedures.” NMSA 1978, § 12-10A-15(A).

## **II. The Public Health Act**

22. Although not technically the organic or primary enabling statute of the Department of Health (that would be Article 7 of Chapter 9, which is largely devoted to the Department’s internal structure and operations, interspersed with a handful of disparate initiatives, like the institution of a project on the collection of gambling-addiction data), the Public Health Act lays out the bulk of more the important duties and powers of the Department.

23. Although one of the 26 broad “authorit[ies]” granted to the Department is the ability to “respond to public health emergencies and assist communities in recovery,” none of the specific provisions in or powers given to the Department under the Public Health Act is predicated on, or even tied to, the declaration of an emergency under § 12-10-17<sup>1</sup> or a public health emergency under § 12-10A-5.

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<sup>1</sup> A proclamation of emergency under the Riot Control Act, NMSA 1978, §§ 12-10-16 to -21, requires that authorities of the local municipality or county in which the emergency is to be declared make a request to the Governor for the proclamation of emergency, *see id.* § 12-10-17. The only locality in which such a proclamation of emergency has been made is the City of Gallup. *See* N.M. Executive Order 2020-027 (dated May 1, 2020), *available at* <https://www.governor.state.nm.us/wp-content/uploads/2020/05/Executive-Order-2020-027.pdf> (last visited May 20, 2020).



24. That full list of authorities, contained in a section titled “Powers and authority of department” is as follows, with those powers potentially relevant to the Closure Order boldfaced and italicized:

The department has authority to:

- A. receive such grants, subsidies, donations, allotments or bequests as may be offered to the state by the federal government or any department thereof or by any public or private foundation or individuals;
- B. supervise the health and hygiene of the people of the state and identify ways to evaluate and address community health problems;
- C. ***investigate, control and abate the causes of disease, especially epidemics, sources of mortality and other conditions of public health;***
- D. ***establish, maintain and enforce isolation and quarantine;***
- E. ***close any public place and forbid gatherings of people when necessary for the protection of the public health;***
- F. ***respond to public health emergencies and assist communities in recovery;***
- G. establish programs and adopt rules to prevent infant mortality, birth defects and morbidity;
- H. prescribe the duties of public health nurses and school nurses;
- I. provide educational programs and disseminate information on public health;
- J. maintain and enforce rules for the licensure of health facilities;
- K. ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable;
- L. ensure a competent public health workforce;
- M. bring action in court for the enforcement of health laws and rules and orders issued by the department;
- N. enter into agreements with other states to carry out the powers and duties of the department;

- O. cooperate and enter into contracts or agreements with the federal government or any other person to carry out the powers and duties of the department;
- P. cooperate and enter into contracts or agreements with Native American nations, tribes and pueblos and off-reservation groups to coordinate the provision of essential public health services and functions;
- Q. maintain and enforce rules for the control of conditions of public health importance;
- R. maintain and enforce rules for immunization against conditions of public health importance;
- S. maintain and enforce such rules as may be necessary to carry out the provisions of the Public Health Act and to publish the rules;
- T. supervise state public health activities, operate a dental public health program and operate state laboratories for the investigation of public health matters;
- U. sue and, with the consent of the legislature, be sued;
- V. regulate the practice of midwifery;
- W. administer legislation enacted pursuant to Title 6 of the Public Health Service Act, as amended and supplemented;
- X. inspect such premises or vehicles as necessary to ascertain the existence or nonexistence of conditions dangerous to public health or safety;
- Y. request and inspect, while maintaining federal and state confidentiality requirements, copies of:
  - (1) medical and clinical records reasonably required for the department's quality assurance and quality improvement activities; and
  - (2) all medical and clinical records pertaining to the individual whose death is the subject of inquiry by the department's mortality review activities; and
- Z. *do all other things necessary to carry out its duties.***

NMSA 1978, § 24-1-3 (emphases added). Although three cases exist citing this statute, it has never been meaningfully construed by any court.

## FACTUAL BACKGROUND

### I. COVID-19

25. In the last days of 2019, a new form of coronavirus was identified in Wuhan, the roughly New York City-sized (in terms of population) capital of a landlocked, east-central province of China. Compared to the average seasonal flu, the virus was determined to be very easily transmitted from one person to another, and the rate at which it hospitalizes and kills those it infects is unusually high, although it has been difficult to obtain reliable figures to quantify either concept. This is in large part because most people who contract the virus are asymptomatic or have mild, cold-like symptoms, meaning that they are unlikely to ever know they ever had it. *See, e.g.,* Carl Heneghan et al., *COVID-19: What Proportion Are Asymptomatic?*, Centre for Evidence-Based Medicine, Univ. of Oxford (Apr. 6, 2020), *available at* <https://www.cebm.net/covid-19/covid-19-what-proportion-are-asymptomatic/> (last visited May 20, 2020) (stating that “between 5% and 80% of people testing positive for SARS-CoV-2 may be asymptomatic”).

26. On the question of the disease’s deadliness, one recent study (which appears to be generally consistent with figures being reported by major health agencies) estimates that the fatality rate among *symptomatic* cases in the United States is 1.3% (with a confidence interval spanning from 0.5% to 3.6%). *See* Anirban Basu, *Estimating the Infection Fatality Rate Among Symptomatic COVID-19 Cases in the United States*, Health Affairs (May 7, 2020), *available at* <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2020.00455> (last visited May 20, 2020).

27. On the question of infectiousness, one study calculated an  $R_0$  value (the average number of new infections expected to be generated by one infection, assuming a completely non-

immune population, and typically assuming normal, non-social-distancing behavior by the public; this figure will vary geographically based on factors such as climate and population density) *in Wuhan* of 5.7, which is similar to the accepted generic figures for polio, rubella, smallpox, and HIV (although it should be noted that, of course, vaccines exist for most of those, while HIV remains transmissible over the entire life of the person infected). *See* Steven Sanche et al., *High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2*, 26 Emerging Infectious Diseases (July 2020 ed.), [https://wwwnc.cdc.gov/eid/article/26/7/20-0282\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article) (last visited May 20, 2020). Other published studies have estimated the value as low as 2.2 (which still indicates positive growth since the figure is higher than 1, and is associated with an effective herd immunity of 54.5% of the population). *See* Qun Li et al., *Early Transmission Dynamics in Wuhan, China of Novel Coronavirus-Infected Pneumonia*, 382 N. Eng. J. Med. 1268 (Mar. 26, 2020), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7121484/> (last visited May 20, 2020).

28. Like the flu, the danger posed by coronavirus is not evenly distributed across the population, but is borne overwhelmingly by those of advanced age or with certain preexisting medical conditions. Here is the CDC’s table summarizing with specificity what most people already know generally, regarding the disparate risk the virus poses to the old and young:

Age group (yrs.)	%		
	Hospitalization	ICU Admission	Case-Fatality
<b>0-19</b>	1.6-2.5	0	0
<b>20-44</b>	14.3-20.8	2.0-4.2	0.1-0.2
<b>45-54</b>	21.2-28.3	5.4-10.4	0.5-0.8
<b>55-64</b>	20.5-30.1	4.7-11.2	1.4-2.6
<b>65-74</b>	28.6-43.5	8.1-18.8	2.7-4.9
<b>75-84</b>	30.5-58.7	10.5-31.0	4.3-10.5
<b>≥ 85</b>	31.3-70.3	6.3-29.0	10.4-27.3
<b>Total:</b>	<b>20.7-31.4</b>	<b>4.9-11.5</b>	<b>1.8-3.4</b>

*Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12 – March 16, 2020*, Centers for Disease Control and Prevention (Mar. 18, 2020), [https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm#T1\\_down](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm#T1_down) (last visited Mar. 25, 2020) (absolute numbers removed for clarity).

29. From its origins in China, the virus has spread internationally, creating a worldwide pandemic known as COVID-19. See *WHO Characterizes COVID-19 as a Pandemic*, World Health Organization (Mar. 11, 2020), available at <https://bit.ly/2W8dwpS> (last visited Mar. 23, 2020).

30. The impact of the disease — as measured in infections, hospitalizations, and deaths — has varied wildly from country to country and within countries, based on factors like climate, population density, cultural norms regarding the cohabitation of older family members, and (significantly more speculatively) the policy prescriptions enacted in different jurisdictions, which vary from almost purely voluntary measures to compulsory stay-at-home orders.

31. The Department of Health tracks the number of confirmed cases, the number of tests administered, and the number of deaths resulting from the virus in each zip code and county in New Mexico. See *COVID-19 in New Mexico*, N.M. Dep't of Health, <https://cvprovider.nmhealth.org/public-dashboard.html> (last visited May 20, 2020).

32. The state as a whole has had 6,192 cases and 274 deaths, and there are 204 people currently hospitalized. See *id.* Although these numbers should be assessed against a backdrop of (among other things)<sup>2</sup> a general mortality rate of 863.8 deaths per 100,000 people per year — which would suggest that, if New Mexico has approximately 2.1M people, an average of 3,780

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<sup>2</sup> As other bases for comparison, the most-recent CDC data states that, in 2017, New Mexico had 493 deaths from drug overdoses and 173 deaths from homicide. See *States of the State of New Mexico*, Nat'l Center for Health Stats., <https://www.cdc.gov/nchs/pressroom/states/newmexico/newmexico.htm> (last visited May 20, 2020).

people pass away in any given 2.5-month period — they do suggest a disease materially worse than the annual seasonal flu, which varies in severity from year to year but typically kills between the mid-30,000s and low-60,000s *nationally*. See *Deaths and Mortality*, Nat’l Center for Health Stats., <https://www.cdc.gov/nchs/fastats/deaths.htm> (last viewed May 20, 2020); *Past Seasons Estimated Influenza Disease Burden*, Centers for Disease Control and Prevention, <https://www.cdc.gov/flu/about/burden/past-seasons.html> (last visited May 20, 2020).

33. COVID-19 has not impacted everywhere in New Mexico equally, however, with counties in the northwestern part of the state bearing the brunt of the disease and counties in the eastern half of the state experiencing a number of cases that make comparisons of COVID-19 to the flu more than fair. As for the counties in which the Plaintiffs live, as of the date of this filing, Bernalillo County has had 1,225 cases and 59 deaths; Colfax County has had 5 cases and 0 deaths, Curry County has had 43 cases and 0 deaths; Lea County has had 18 cases and 0 deaths; and Socorro County has had 49 cases and 4 deaths. See *COVID-19 in New Mexico*, *supra* ¶ 31.

## **II. The Defendants’ Orders and Actions**

34. On March 11, 2020, the Governor signed Executive Order 2020-04 (Ex. 4), declaring a public health emergency under PHERA and “invok[ing] and exercis[ing] all powers vested in [her] office under the All Hazard Emergency Management Act, NMSA 1978, §§ 12-10-1 to though 12-10-10,” but not declaring an emergency under § 12-10-17. See note 1, *supra*.

35. The Governor further ordered that “[t]he Department of Health and the Department of Homeland Security and Emergency Management shall collaborate to provide an effective and coordinated response to this public health emergency and shall consult with my office regarding all matters germane to this Order,” which is as close as the order comes to authorizing or suggesting

the closure of private businesses or the reduction of in-person workforces. *See* N.M. Executive Order 2020-004 ¶ 3, at 3 (Ex. 4).

36. On March 13, the DOH Secretary issued an order limiting nursing-home visitations, and followed it up three days later with an order prohibiting mass gatherings — defined, at that time, of groups of 100 or more, although that same term has since been cut down to where it today refers to any group of 5 or more people. *See* N.M. Dep’t of Health Public Health Emergency Order Limited Mass Gatherings and Implementing Other Restrictions Due to COVID-19 (Mar. 16, 2020), *available at* <https://cv.nmhealth.org/wp-content/uploads/2020/03/031620-DOH-PHO-r.pdf> (last visited Mar 20, 2020); *see generally* *Public Health Orders and Executive Orders*, N.M. Dep’t of Health, <https://cv.nmhealth.org/public-health-orders-and-executive-orders/> (last visited May 20, 2020) (showing the progression of DOH orders).

37. On March 23, the DOH Secretary issued the Closure Order, creating a distinction between essential and nonessential businesses and ordering that “[a]ll businesses, except those entities identified as ‘essential businesses’, are hereby directed to reduce the in-person workforce at each business or business location by 100%,” and that “[e]ssential businesses’ may remain open provided they minimize their operations and staff to the greatest extent possible.” Closure Order ¶ 2, at 4 (Ex. 1). Restaurants were defined as essential, but “only for delivery or carry out,” a limitation that remains in place to this day. Closure Order ¶ 3(t), at 4 (Ex. 1); Newest Order ¶ 1(u), at 5 (Ex. 2).

38. The parameters of the Closure Order were tweaked on several occasions — on April 6, 11, and 30, and May 5 — from its initial release to its most-recent iteration (the Newest Order) on May 15, with probably the most significant added restrictions being that **(a)** essential businesses, which were initially allowed to operate without restriction on number of customers,

were restricted to 20% of maximum occupancy on April 6; and **(b)** “houses of worship,” which were initially excluded from the mass-gathering prohibition, were made subject to the ban by an order dated Saturday, April 11 (the day before Easter). *See Public Health Orders and Executive Orders*, N.M. Dep’t of Health, *supra* ¶ 36. Restrictions began to be eased slightly with the April 30 order, except that that order began the practice (carried forward by subsequent orders) of excluding Cibola, McKinley, and San Juan Counties from any relaxation on restrictions. In any event, no significant relaxation in closures or restrictions (and nothing material to the Plaintiffs in this case) was enacted until the Newest Order.

39. In the Newest Order (Ex. 2), a further delineation was made between “close-contact businesses” and “recreational facilities” and all other nonessential businesses, with the latter being allowed to open at 25% of maximum occupancy and the former remaining closed. Newest Order ¶ 4, at 6 (Ex. 2). “‘Close-contact business’ includes barbershops, adult entertainment venues, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services,” while “[r]ecreational facilities’ include movie theaters, swimming pools, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, performance venues, go-kart courses, indoor shopping malls, and other places of indoor recreation or indoor entertainment.” Newest Order ¶¶ 6-7, at 5 (Ex. 2). Restaurants remained restricted to takeout and deliver. *See id.* ¶ 3(u), at 5 (Ex. 2).

40. With one exception,<sup>3</sup> each of the DOH Secretary’s orders justify the legality of their directives with (typically one-time) citations to broad ranges of statutes, rather than making any attempt to point to specific statutory authorization for the actions taken (including the mandated

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<sup>3</sup> The DOH Secretary’s orders cite, apparently validly, the PHERA provision allowing rationing of healthcare supplies when directing retailers to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual.” Closure Order ¶ 9, at 5 (citing NMSA 1978, § 12-10A-6); Newest Order ¶ 15, at 7 (same).



100% reduction in workforce of businesses and the elimination of dine-in eating at restaurants) or the distinctions drawn (most notably between essential and nonessential businesses, but more generally as to the disparate treatment afforded different businesses). Aside from the one exception noted in the footnote below, and a declaration of the fact that COVID-19 is “a condition of public health importance as defined in NMSA 1978, § 24-1-2(A),” Closure Order at 2 (Ex. 1); Newest Order at 3 (Ex. 2), the following paragraph — which appears to be verbatim across all iterations of the order — contains the only statutory authority cited in the entire document:

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-IOA-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to-18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

Closure Order at 1 (Ex. 1); Newest Order at 2 (Ex. 2).

41. Since issuing the Closure Order, the Defendants have created form documents specifically threatening noncompliant individuals with civil administrative penalties of \$5,000 per day if they do not fully comply. *See* Notice & Cease-and-Desist Letter (Exs. 3B & 3C). On information and belief, the Defendants have also directed state and local law-enforcement agencies to serve these documents and copies of the DOH Secretary’s orders on individuals believed to be noncompliant, including some of the Plaintiffs, and have directed these law-enforcement agencies to orally inform such individuals that they will be exposed to a \$5,000-per-day fine. *See* ¶¶ 2-8, *supra*.

**COUNT 1**  
**CLAIM FOR A DECLARATORY JUDGMENT THAT VIOLATIONS OF THE DOH SECRETARY'S RESTRICTIONS ON IN-PERSON BUSINESS ACTIVITY ARE NOT PUNISHABLE BY A CIVIL PENALTY UNDER § 12-10A-19**

42. Pursuant to Rule 1-010(C) NMRA, the Plaintiffs incorporate by reference all of the foregoing allegations in this Complaint.

43. The Defendants have made specific threats to the Plaintiffs and others that violations of the DOH Secretary's orders will subject them to up-to-\$5,000 civil penalties under § 12-10A-19, which will be assessed by DOH Secretary and adjudicated through her own Department's administrative-hearing process.

44. This has placed the Plaintiffs in fear that, should they slightly or accidentally violate one of the orders — which is entirely possible, given their constantly changing nature and the fact that no court decisions have resolved, and no easily readable government guidance has been written to clarify, ambiguity in their text — they will be subject to the potentially ruinous financial penalties imposed and adjudicated by the Department of Health itself, which:

a. accrue into even larger sums than \$5,000 before any one assessment has been adjudicated, because the DOH Secretary takes the position that being in violation for 10 days constitutes 10 separate violations, which can all be adjudicated at once for a total penalty of \$50,000; this is in contrast to the petty-misdemeanor penalties in § 24-1-21, which requires an adjudication of guilt prior to subsequent violations accruing;

b. lack the procedural protections of a petty misdemeanor, which in Magistrate or Metropolitan Court include the right to a jury trial, *see* NMSA 1978, §§ 34-8-1 & -8A-5(B), instead of a bench hearing in front of a Department of Health administrative law judge; and

c. may not require the State to prove certain key substantive elements, like a rigorous *mens rea* element, required to prove a petty misdemeanor, and may not allow for certain merits defenses, like necessity or justification, afforded to a defendant in a petty-misdemeanor case.

45. “Any person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the [] statute . . . and obtain a declaration of rights, status or other legal relations thereunder.” NMSA 1978, § 44-6-4; *see also id.* § 44-6-13 (“For the purpose of the Declaratory Judgment Act, the state of New Mexico, or any official thereof, may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the state of New Mexico, the constitution of the United States or any of the laws of the state of New Mexico or the United States, or any statute thereof.”).

46. The Plaintiffs ask the Court to grant a declaratory judgment ruling that the Defendants lack the authority to impose, or to initiate administrative proceedings to impose, the civil administrative penalty described in § 12-10A-19 for violations of the DOH Secretary’s orders restricting in-person activity by private businesses.

**COUNT 2**  
**CLAIM FOR AN INJUNCTION PROHIBITING THE DEFENDANTS FROM**  
**WRONGFULLY THREATENING BUSINESS OWNERS AND OPERATORS WITH**  
**CIVIL PENALTIES UNDER § 12-10A-19**

47. Pursuant to Rule 1-010(C) NMRA, the Plaintiffs incorporate by reference all of the foregoing allegations in this Complaint.

48. Where a State official lacks legal basis to impose a given sanction, whether civil or criminal, on a private citizen, there can be no public interest in the State threatening the imposition of that fine in order to achieve a desired end.

49. The Plaintiffs thus ask the Court to grant a preliminary and, ultimately, permanent injunction against the Defendants from threatening, or causing or directing others to threaten, the imposition of penalties under § 12-10A-19 for violations of the DOH Secretary's orders.

**COUNT 3**  
**ALTERNATIVE CLAIM FOR A DECLARATORY JUDGMENT THAT JUST**  
**COMPENSATION MUST BE PAID FOR ALL DEPRIVATIONS OF**

50. Pursuant to Rule 1-010(C) NMRA, the Plaintiffs incorporate by reference all of the foregoing allegations in this Complaint.

51. Although it is clear that violation of the DOH Secretary's orders cannot give rise to a civil administrative penalty under PHERA, if this Court were to determine that PHERA's penalty provision applies, it must also rule that the "just compensation" provision of PHERA, *see* NMSA 1978, § 12-10A-15(A), applies, and that this compensation "shall include lost revenues and expenses incurred" by the Plaintiffs as a result of the closures and restrictions,<sup>4</sup> *id.*

52. Thus, in the alternative, if the Court will not grant a declaratory judgment and an injunction ruling that § 12-10A-19 of PHERA (relating to monetary penalties for violation) is inapplicable to the DOH Secretary's orders, it should order that § 12-10A-15 of PHERA (relating to just compensation) is applicable to the restrictions imposed by the orders.

**PRAYER FOR RELIEF**

The Plaintiffs hereby pray that this Court grant the following forms of relief to resolve the actual controversies raised in the Complaint and to afford relief from uncertainty and insecurity with respect to the rights, status, and other legal relations of the parties:

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<sup>4</sup> The outright closures of businesses ordered by the DOH Secretary's orders would appear to constitute regulatory takings — thus requiring the payment of just compensation — in any event, but, if PHERA applies, then even those restrictions that fall short of the 100% workforce reduction ordered for most nonessential businesses should be compensable under § 12-10A-15.

A. a declaratory judgment stating that the civil administrative penalties of NMSA 1978, § 12-10A-19 do not apply to the orders issued by DOH Secretary in March, April, and May of 2020 regarding COVID-19;


B. a permanent injunction forbidding the Defendants from threatening, or causing or directing others to threaten, the imposition of penalties under § 12-10A-19 for violations of these orders of the DOH Secretary's;

C. any costs of litigation allowed by law; and

D. any other relief allowed by law and that the Court deems just and appropriate.

Respectfully submitted,

HARRISON & HART, LLC

By: 

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Email: carter@harrisonhartlaw.com

*Attorneys for the Plaintiffs*

### **Exhibit List**

Ex. 1: Closure Order of the DOH Secretary (6 pages)

Ex. 2: Newest Order of the DOH Secretary (8 pages)

Ex. 3A: Uniform Traffic Citation for § 24-01-21 Violation (1 page)

Ex. 3B: Notice of Violations (1 page)

Ex. 3C: Cease-and-Desist Letter Threatening \$5,000 Penalties Under § 12-10A-19 (1 page)

Ex. 4: N.M. Executive Order 2020-004 (5 pages)

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**PUBLIC HEALTH ORDER**  
**NEW MEXICO DEPARTMENT OF HEALTH**  
**CABINET SECRETARY KATHYLEEN M. KUNKEL**

**MARCH 23, 2020**

**Public Health Emergency Order Closing All Businesses and Non-Profit  
Entities Except for those Deemed Essential and  
Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, COVID-19 infections in the United States have increased from 1,000 confirmed cases to over 30,000 confirmed cases;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE, I**, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through

Executive Order 2020-004, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Condition of public health importance” means an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community.

(2) “Disease” means an illness, including those caused by infectious agents or their toxic products which may be transmitted to a susceptible host.

(3) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, emergency veterinary and livestock services, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities necessary to provide services to those workers employed by essential businesses and essential non-profit entities;
- d. Grocery stores, all food and beverage stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;

- f. All facilities used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;
- g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, custodial services, plumbers, electricians, and other skilled trades;
- j. Media services including television, radio, and newspaper operations;
- k. Gas stations, automobile repair facilities, and retailers who generate the majority of their revenue from the sale of automobile repair products;
- l. Hardware stores;
- m. Laundromats and dry cleaner services;
- n. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- o. Funeral homes, crematoriums and cemeteries;
- p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;
- q. Real estate services including brokers, title companies, and related services.
- r. Businesses providing mailing and shipping services, including post office boxes;



- s. Laboratories and defense and national security-related operations supporting the United States government or a contractor to the United States government;
- t. Restaurants, but only for delivery or carry out and local breweries or distillers but only for carry out;
- u. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and
- v. Logistics and businesses that store, ship or deliver groceries, food, goods or services directly to residences or retailers.

(4) "Individuals" means natural persons.

(5) "Gathering" means any grouping together of individuals in a single connected location.

(6) "Mass gathering" means any public or private gathering that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space where individuals are within six (6) feet of each other, but does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include "individuals" congregated in a church, synagogue, mosque, or other place of worship.

**I HEREBY DIRECT AS FOLLOWS:**

- (1) All Mass Gatherings are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto.
- (2) All businesses, except those entities identified as "essential businesses", are hereby directed to reduce the in-person workforce at each business or business location by 100%. "Essential businesses" may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall, to the greatest extent possible, adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. Further, all essential businesses shall ensure that all surfaces are cleaned routinely.
- (3) This Order only requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.
- (4) All casinos and horse racing facilities shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands.

- (5) Hotels, motels, RV parks, and other places of lodging shall not operate at more than fifty percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays or as temporary housing shall not be counted for purposes of determining maximum occupancy.
- (6) All call centers situated in New Mexico are directed to reduce their in-person workforce by 100%.
- (7) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.
- (8) All public and private employers are required to comply with this Order and any instructions provided by State departments or agencies regarding COVID-19.
- (9) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

**I FURTHER DIRECT** as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) This Order shall remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

**I FURTHER ADVISE** the public to take the following preventive precautions:

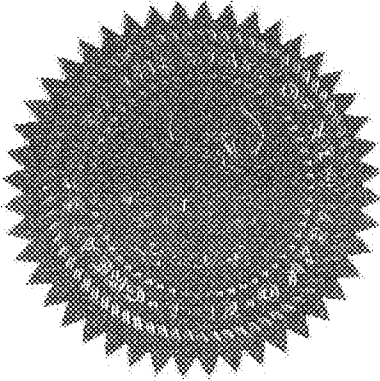
- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.

**THIS ORDER** amends the Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19 issued on March 19, 2020, supersedes any other previous orders, proclamations, or directives in conflict.

ATTEST:

*Maggie Toulouse Oliver*

MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE



DONE AT THE EXECUTIVE OFFICE  
THIS 24TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

*Kathleen M. Kunkel*

KATHYLEEN M. KUNKEL  
SECRETARY OF THE STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH

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**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT OF HEALTH  
CABINET SECRETARY KATHYLEEN M. KUNKEL**

**MAY 15, 2020**

**Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, April 30, 2020, and May 5, 2020, Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; **all New Mexicans should be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:
  - A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;
  - B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

- C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and
- D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places

3. The May 5, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, and April 30, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

### **ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

**WHEREAS**, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 5,500 and confirmed cases in the United States have risen to more than 1.4 million;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.**

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;
- d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;
- f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

- g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;
- j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;
- k. Media services including television, radio, and newspaper operations;
- l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;
- m. Hardware stores and self-storage facilities;
- n. Laundromats and dry cleaner services;
- o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- p. Funeral homes, crematoriums and cemeteries;
- q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;
- r. Real estate services including brokers, title companies, and related services;

- s. Businesses providing mailing and shipping services, including post office boxes;
- t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;
- u. Restaurants, but only for delivery or carry out and local breweries, wineries, or distillers but only for carry out;
- v. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and
- w. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) “Individuals” means natural persons.

(3) “Gathering” means any grouping together of individuals in a single connected location.

(4) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, or other grouping that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space. “Mass gathering” does not include the presence of five (5) or more individuals where those individuals regularly reside. “Mass gathering” does not include individuals who are public officials or public employees in the course and scope of their employment.

(5) “Houses of worship” means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) “Close-contact business” includes barbershops, adult entertainment venues, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services.

(7) “Recreational facilities” include movie theaters, swimming pools, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, performance venues, go-kart courses, indoor shopping malls, and other places of indoor recreation or indoor entertainment.

(8) “COVID-Safe Practices” (“CSP”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. That document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

(9) “Places of lodging” means all hotels, motels, RV parks, co-located short term condominium rentals with a central check-in desk, and short-term vacation rentals.

(10) “Retail space” means any essential business that sells goods or services directly to consumers or end-users such as grocery stores or hardware stores and includes the essential businesses identified in the categories above: 1(d), 1(l), 1(m), 1(p), and 1(s).



**I HEREBY DIRECT AS FOLLOWS:**

- (1) Except as provided elsewhere in this Order, all “mass gatherings” are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act.
- (2) “Essential businesses” must operate in accordance with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.
- (3) “Close-contact businesses” and “recreational facilities” must remain closed.
- (4) Any business that is not identified as an “essential business”, a “close-contact business”, or a “recreational facility” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Businesses identified as a “retail space” may operate provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP’s set out in the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. If customers are waiting outside of a business, the business must take reasonable measures to ensure that customers maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.
- (5) “Houses of worship” may hold services and other functions provided that they comply with the “COVID-Safe Practices (CSPs) for Houses of Worship” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. Further, “houses of worship” may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.
- (6) “Places of lodging” shall not operate at more than 25% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. Further, short-term vacation rentals shall limit guests to New Mexico residents only.
- (7) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or exercising. Further, all individuals should comply with the “COVID-Safe Practices (CSPs) for All New Mexicans” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.

- (8) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.
- (9) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.
- (10) Golf courses may open for golf only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses".
- (11) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses".
- (12) State parks may open on a modified basis and subject to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.
- (13) Summer youth programs may operate on a limited basis that complies with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".
- (14) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.
- (15) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

**I FURTHER DIRECT** as follows:

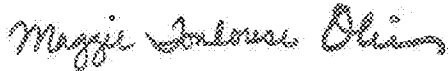
- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

- (4) This Order shall take effect immediately and remain in effect through May 31, 2020. This Order shall be effective in all counties of New Mexico except for Cibola County, McKinley County, and San Juan County. Cibola County, McKinley County, and San Juan County are subject to the terms of the May 5, 2020 Public Health Emergency Order through May 31, 2020.

**I FURTHER ADVISE the public to take the following preventive precautions:**

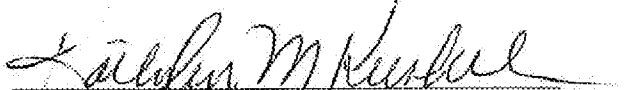
- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships. Self-quarantine or self-isolate for at least fourteen days after all out-of-state travel.

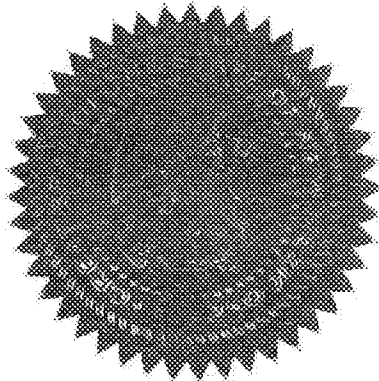
ATTEST:

  
\_\_\_\_\_  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 15TH DAY OF MAY 2020

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

  
\_\_\_\_\_  
KATHYLEEN M. KUNKEL  
SECRETARY OF THE STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH





COUNTY CODE AGENCY CODE

NTC

NEW MEXICO STATE  
POLICE

25 790

8815424 0

STATE OF NEW MEXICO  
UNIFORM TRAFFIC CITATION

NAME (LAST) BURLESON		NAME (FIRST) JAMES		NAME (MIDDLE) WILIAM		NAME (SUFFIX)		
PHYSICAL ADDRESS 1754 GALLEGOS RD				CITY SOCORRO		STATE NM	ZIP CODE 878010000	
MAILING ADDRESS SAME AS ABOVE				CITY		STATE	ZIP CODE	
STATE NM	ID PROVIDED YES	DRIVER LICENSE NUMBER 035416587		DATE OF BIRTH 01/28/1974		SEX M	HEIGHT 6' 00"	
PHONE NUMBER				WEIGHT 195				EYE COLOR HAZ
LICENSE PLATE NUMBER				STATE	VEH YR	COLOR	TYPE	
CMV	LICENSE TYPE D		HAZ MAT PL	PASS 18+	DOT NUMBER			
TRAFFIC LIGHT		WEATHER CLEAR		ROAD DRY		LIGHT LIGHT		
ACCIDENT NO		STATUTE 66-7-301 SPEEDING MPH IN A		STATUTE 66-5-229C NO INSURANCE PROOF		STATUTE 24-01-21		
DATE 05/01/20		TIME 11:13		IDENTIFICATION 6407		DISTRICT D11		
MILE POST		LOCATION: 205 MANZANARES ROAD						
OFFICER'S PRINTED NAME CHAVEZ, NICHOLAS				OFFICER'S SIGNATURE				
VIOLATION: VIOLATION OF PUBLIC HEALTH ACT								
Essential Facts: SUBJECT IS OPERATING A FLEA MARKET WITH MULTIPLE INDIVIDUALS PRESENT. SUBJECT IS IN VIOLATION OF 24-1-21, PUBLIC HEALTH ORDER ACT. SUBJECT WAS GIVEN A CEASE AND DESIST ORDER, AND FAILED TO COMPLY.								

**PENALTY ASSESSMENT:** I acknowledge my guilt of the offense charged and my options as explained to me by the officer. I agree to remit by mail the penalty assessment of \_\_\_\_\_ initials  
OFFICER MAY NOT ACCEPT PAYMENT

**TRAFFIC ARRAIGNMENT:** You are hereby ordered to appear in \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_  
My failure to appear will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an additional \$100.00 warrant fee. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered. \_\_\_\_\_ initials

**COURT APPEARANCE:** I acknowledge receipt of this notice and without admitting guilt agree to appear in \_\_\_\_\_  
**SOCORRO MAGISTRATE** (575) 835-2500 \_\_\_\_\_ initials  
102 WINKLER SOCORRO 87801 on (or by) 06/01/2020 at 8:30 AM

**WARNING NOTICE:** I acknowledge receipt of this notice and agree that a violation of the law has been committed. No further action is required.



I agree to the above marked determination.  
Signature *X* [Signature] 25 790 8815424 0

Booked  
 Unable to Sign

**INSTRUCTIONS TO MOTORIST**

REFUSAL TO ACCEPT AND SIGN THIS CITATION WILL REQUIRE THAT YOU BE DETAINED IMMEDIATELY AND HELD IN CUSTODY UNTIL TAKEN TO APPEAR BEFORE A JUDGE, WHEN ONE BECOMES AVAILABLE.

**PENALTY ASSESSMENT:** If this is a penalty assessment notice, your signature constitutes an acknowledgement of guilt and no court appearance is required. You must remit the prescribed penalty amount indicated on the face of this citation within thirty days of the date of issuance. Failure to remit the penalty amount within the required time frame will result in the suspension of your driver's license and driving privileges and subject you to payment of an additional reinstatement fee.

Insure proper credit for payment by enclosing this copy of the citation with your check or money order made payable to the Motor Vehicle Division (or applicable jurisdiction indicated below) and mail to the address given below. **DO NOT SEND CASH!**

**TRAFFIC ARRAIGNMENT:** If this notice is a notice to appear in arraignment court, signing this citation is acknowledging receipt of the court's order to appear and not an admission of guilt. My FAILURE TO APPEAR will result in the issuance of a warrant for my arrest, my license being suspended and I will be required to pay an ADDITIONAL \$100.00 WARRANT FEE. I acknowledge receipt of this citation and without admitting guilt, I will appear as ordered.

**COURT APPEARANCE:** If this is a notice to appear in court, signing this citation is only an agreement to appear and not an admission of guilt. Failure to appear is a misdemeanor subjecting you to another prosecution in addition to the offense alleged on this citation. Also, failure to comply with your signed promise to appear will result in the suspension of your driver's license and driving privileges by the licensing jurisdiction. You are required to appear in court within the time frame specified by the officer.

**WARNING NOTICE:** If this is a warning notice, it does not require an appearance in court or payment of a penalty. However, the officer is warning you that a violation has been committed and that convictions for offenses of this nature would result in the posting of the violation against your driving record, notification to the licensing jurisdiction and possible subsequent adverse action against your driving privileges.

STATE PENALTY ASSESSMENT ADDRESS		LOCAL PENALTY ASSESSMENT ADDRESS	
<p><b>THREE WAYS TO PAY</b></p> <ul style="list-style-type: none"> <li>• <b>ONLINE</b> at <a href="http://www.mvd.newmexico.gov">www.mvd.newmexico.gov</a> - click on Pay My Citation</li> <li>• <b>CALL</b> toll free 888-683-4836 - choose option 2</li> <li>• <b>MAIL to:</b> MOTOR VEHICLE DIVISION NMPA DEPARTMENT P.O. BOX 25130 SANTA FE, NM 87504-25130</li> </ul>		Please remit payment amount indicated on face of this citation to:	

PLAINTIFF'S EXHIBIT

DEFENDANT COPY

**\*\* NOTICE \*\***

**THIS BUSINESS IS OPERATING IN VIOLATION OF  
EXECUTIVE ORDER 2020-004, NM DEPARTMENT OF HEALTH  
PUBLIC HEALTH ORDERS**

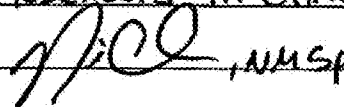
I, manager or owner of the below named business, acknowledge receipt of this notice of a First Violation of Executive Order 2020-004, New Mexico Department of Health Public Health Orders. I understand that additional violations are subject to citation and fines as described below. Today you will be provided a copy of this notice and a cease and desist order.

Business Name (PRINT):	<u>JIM BURLESON</u>
Business Address (PRINT):	<u>205 MANZANARES AVENUE, SOCORRO NM 87801</u>
Manager/Owner Name & Title:	<u>JIM BURLESON</u>

Manager/Owner Name & Title: \_\_\_\_\_

  
Signature

REFUSED TO SIGN

Issuing Officer Name:	<u>NICHOLAS R. CHAVEZ, NMSP</u>
Issuing Officer Signature:	 <u>NMSP</u>
Date & Time Notice Issued:	<u>05-01-2020</u>

If after issuance of this notice and cease/desist order you request clarification on your businesses essential or non-essential status an inquiry can be submitted to [covid.exemption@state.nm.us](mailto:covid.exemption@state.nm.us).

A Second Violation will be cited as a petty misdemeanor for violating a Department of Health Public Health Order under New Mexico's Public Health Act (NMSA 1978 § 24-1-21) and is punishable by a fine of up to \$100 (and/or up to six months in jail).

A Third Violation, and each following violation, will be referred to the New Mexico Department of Health for violating New Mexico's Public Health Emergency Response Act and each violation is punishable by a civil administrative penalty of up to \$5,000.



New Mexico  
Department of Public Safety

MICHELLE LUJAN GRISHAM  
GOVERNOR

MARK R. SHEA  
CABINET SECRETARY

TIM Q. JOHNSON  
CHIEF / DEPUTY SECRETARY

DR. AUGUST M. FONS  
DEPUTY SECRETARY

MAY 01, 2020 Date

Dear: JIM BURLISON, Name of Business

This letter is to notify you that JIM BURLISON [Name of Business] is in violation of the Public Health Order issued by the New Mexico Department of Health ("NMDOH") on April 6, 2020, adopted pursuant the Public Health Act (NMSA 1978, Section 24-1-1 et seq.) and Public Health Emergency Response Act (NMSA 1978, Section 12-10A-19 et seq.). You are hereby ordered to immediately **cease and desist** from MARKET [regulated activity] for violating the Public Health Order.

On, MAY 01, 2020 [Date of Violation], JIM BURLISON [Name of Business] was observed to be OPERATING FLEA MARKET [Insert Violation] in violation of the attached Public Health Order. The Department of Public Safety and the Department of Health have authority to issue the cease and desist pursuant to:

Section 24-1-21 of the Public Health Act:

*Any person violating any of the provisions of the Public Health Act or any order, rule or regulation adopted pursuant to the provisions of the Public Health Act is guilty of a petty misdemeanor and shall be punished by a fine not to exceed one hundred dollars (\$100) or imprisonment in the county jail for a definite term not to exceed six months or both such fine and imprisonment in the discretion of the court. Each day of a continuing violation of Subsection A of Section 24-1-5 NMSA 1978 after conviction shall be considered a separate offense.*

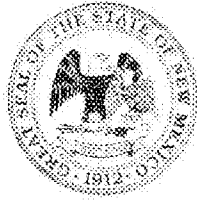
And

Section 12-10A-19 of the Public Health Emergency Response Act:

*The secretary of health, the secretary of public safety or the director may enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars (\$5,000) for each violation of that act. A civil administrative penalty may be imposed pursuant to a written order issued by the secretary of health, the secretary of public safety or the director after a hearing is held in accordance with the rules promulgated pursuant to the provisions of Section 12-10A-17 NMSA 1978.*

You are ordered to comply immediately with this order. Failure to comply with this order may result in criminal and civil penalties as stated above and may also include loss of licensure and other administrative sanctions as provided by law.

If after issuance of this notice and cease/desist order you request clarification on your businesses essential or non-essential status an inquiry can be submitted to [covid.exemption@state.nm.us](mailto:covid.exemption@state.nm.us).



# State of New Mexico

Michelle Lujan Grisham  
*Governor*

## EXECUTIVE ORDER 2020-004

### ORDER DECLARING A STATE OF PUBLIC HEALTH EMERGENCY AND INVOKING THE POWERS PROVIDED BY THE ALL HAZARD EMERGENCY MANAGEMENT ACT AND THE EMERGENCY LICENSING ACT

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China and reported to the World Health Organization. The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease named COVID-19.

Since it was first identified and reported, COVID-19 has spread globally. Over 100 countries have confirmed cases of COVID-19 and more than 100,000 people have been infected.

The incidence of COVID-19 within the United States has similarly increased. The first domestic report of COVID-19 occurred on January 21, 2020, in Washington State. To date, there have been more than 1,000 reported domestic cases of COVID-19 in 39 states.

Several public health organizations have implemented emergency measures intended to slow the spread of the disease. For example, on January 20, 2020, the United States Centers for Disease Control and Prevention activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO similarly declared a Public Health Emergency of International Concern shortly thereafter. At least twelve of our sister states, including California, Colorado, Florida, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon,

PLAINTIFF'S  
EXHIBIT

4

Utah, and Washington, have also implemented emergency protocols intended to mitigate the transmission of COVID-19.

My administration has been proactive in its approach to the COVID-19 epidemic. Over the last several weeks, I have been in direct and frequent contact with officials overseeing the federal response to the COVID-19 outbreak. Further, my office has worked with the New Mexico Secretary of Health and other State emergency services to develop plans to provide a swift and effective response when the inevitability of COVID-19 in New Mexico ultimately materialized.

On March 11, 2020, the first confirmed cases of COVID-19 were reported in New Mexico. For this reason, it is necessary for all branches of State government to take immediate action to minimize the spread of COVID-19 and to minimize the attendant physical and economic harms.

THEREFORE, for the reasons addressed above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, do hereby ORDER and DIRECT:

1. I hereby invoke and exercise all powers vested in my office under the All Hazard Emergency Management Act, NMSA 1978, §§ 12-10-1 through 12-10-10. All branches of State government shall cooperate with federal authorities, other states, and private agencies to provide resources and services necessary to minimize physical and economic harm and assist in the provision of lodging, shelter, health care, food, transportation, or shipping necessary to protect lives or public property. Further, all political subdivisions within New Mexico shall adhere to Section 12-10-10, which mandates compliance with and enforcement of this Order.

2. I further proclaim a public health emergency in accordance with NMSA 1978, 12-10A-5 of the Public Health Emergency Response Act. This proclamation is necessary to minimize the spread and adverse impacts of the COVID-19 in our State. All political subdivisions and



geographic areas within the State of New Mexico are affected by the COVID-19 outbreak and, to the extent permitted by law, they are subject to the provisions of this Order. The temporal scope of this emergency is for a period of 30 days and shall remain in effect until further notice. If necessary, after consultation with the Department of Health Secretary, this Order will be renewed and extended. See NMSA 1978, § 12-10A-5 (2003). All public health officials, including those employed by the Department of Health, Human Services Department, and Aging and Long-Term Service Department, are required to assist in the implementation of this Order.

3. The Department of Health and the Department of Homeland Security and Emergency Management shall collaborate to provide an effective and coordinated response to this public health emergency and shall consult with my office regarding all matters germane to this Order.

4. All cabinets, departments, and agencies shall comply with the directives in this Order and any instruction given by the Department of Health.

5. Pursuant to NMSA 1978, § 13-1-127 (2019), I direct the General Services Department Secretary and the Department of Finance and Administration to assist in the emergency purchase of all goods and services necessary to contain, respond, and mitigate the spread of COVID-19 in New Mexico.

6. The Department of Health and the Department of Homeland Security and Emergency Management shall credential out-of-state professionals who can render aid and necessary services during the pendency of this Order. NMSA 1978, §§ 12-10-10.1 through 12-10-13. (2007).

7. The Office of the Superintendent of Insurance shall promulgate emergency regulations maximizing the available insurance coverage for New Mexicans suffering from

COVID-19, pneumonia, or influenza, while simultaneously ensuring that medical costs do not create barriers to testing and treatment.

8. The Secretary of the New Mexico Department of Workforce Solutions shall adopt such emergency rules, regulations, or declarations as necessary to ensure that individuals who are experiencing a temporary lay-off or furlough status due to forced absences from work because of COVID-19 are eligible to receive unemployment benefits. I direct the Department of Workforce Solutions Secretary to promulgate emergency rules allowing temporary waivers of claims requirements for affected individuals under NMSA 1978, Section 51-1-5(A)(2) & (3) and any other relevant provisions of law. The emergency waiver provisions should be similar to those already provided by 11.3.300.320(E) & (F) NMAC.

9. I direct the Adjutant General to order into service any elements of the New Mexico National Guard that may be needed to support to civil authorities in response to this public emergency. Such assistance shall be provided during the pendency of this Order at the discretion of the Governor. NMSA 1978, §§ 20-1-1 through 20-1-8; NMSA 1978, §§ 20-4-1- through 20-4-14.

10. In accordance with NMSA 1978, §§ 12-11-23 through 12-11-25 and § 12-10-4(B)(3), the Department of Finance and Administration shall make available emergency financial resources on a continuing basis as necessary to address this emergency to the Department of Health. NMSA 1978, § 12-11-25 (2005). The funds shall be expended to protect the public health, safety, and welfare; to provide those resources and services necessary to avoid or minimize economic or physical harm on a temporary, emergency basis. The funds shall be paid out only in an amount specified by warrants drawn by the Secretary of the Department of Finance and Administration upon vouchers approved by the Governor or the Department of Health.

11. This Order may be supplemented or amended.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until the Governor rescinds it.

ATTEST:

*Maggie Toulouse Oliver*

MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 11TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

*Michelle Lujan Grisham*

MICHELLE LUJAN GRISHAM  
GOVERNOR

