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Commonwealth of Pennsylvania
Harrisburg

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February 9, 2021

Alison Beam
Acting Secretary of Health
Pennsylvania Department of Health
Health and Welfare Building
8th Floor West
625 Forster Street
Harrisburg, PA 17120

Dear Acting Secretary Beam:

2020 was a devastating year for all Pennsylvania businesses, particularly so for bars and restaurants. Between March and June, restaurants and bars were closed for indoor dining. While many attempted take-out service, take-out provides nowhere near the revenue of indoor dining and also requires fewer staff members. Summer 2020 saw many restaurants and bars change their business model. They purchased tents and outdoor furniture to allow for outdoor dining and tried to cope with capacity limitations and far fewer patrons. Fall 2020 saw restaurants and bars adjust for cooler weather dining. Many bought outdoor heating systems. By late fall, bars and restaurants were running out of hope. Outdoor dining was no longer possible, and they were still facing capacity restrictions. Many restaurants gave up and closed. Some declared bankruptcy.

The standard business model for a restaurant or bar requires them to function at about 80% capacity to turn any profit. During this time, they were functioning at 25 or 50% capacity. Throughout 2020, these businesses cut every possible cost, spent their savings, and borrowed against lines of credit. Unfortunately, overhead, such as property taxes and mortgages do not go away and remain consistent no matter how bad the economy may be. Day after day, businesses fell further into debt. The holiday season is by far the most profitable time of the year for bars and restaurants and they prayed that the holidays would be enough of a boost to keep them open through the end of the pandemic.

On December 10, 2020, the Governor and Department of Health jointly announced a 3-week closure of bars, restaurants, and other businesses. At that time, there was not and there still has not been a causal connection shown between indoor dining and the increase in COVID cases. By December 10, 2020, these businesses had booked holiday gatherings, they had set schedules for their staff, they

had ordered supplies from their vendors and had planned for the holiday season. The directive of the Governor and the Department of Health was unnecessary and devastating. The Governor and Department of Health offered no relief for these businesses or their employees. While unemployment was possible for the employees, those unemployment checks would be for less than an average weekly wage and would not start arriving until after the Holidays. In an effort to ensure the survival of their businesses and to provide wages to their employees and vendors, hundreds of bars and restaurants chose to stay open for indoor dining during that shutdown. Many gyms also chose to stayed open during this period. While grocery and other stores were supposed to limit capacity, many did not.

During the 3-week shutdown, the Pennsylvania Department of Agriculture issued hundreds of warnings or placards to some of the restaurants and bars that stayed open. There were approximately 107 restaurants and bars that received placards. Even though the Department of Agriculture could have taken further action, they did not and determined the situation to be resolved as of the end of the shutdown period on January 4, 2021.

On December 23, 2020, the Pennsylvania Department of Health, with the assistance of the Pennsylvania Office of Attorney General filed the first of two lawsuits against Pennsylvania bars and restaurants in the Commonwealth Court of Pennsylvania. On January 5, 2021, the Pennsylvania Department of Health filed a second lawsuit against bars and restaurants. In total 50 bars and restaurants were sued. 4 have since reached a settlement and been dismissed from the suits, leaving 46 remaining parties. This is an unprecedented lawsuit. There is no evidence of a similar lawsuit ever having been brought by a state agency against Pennsylvania businesses. For reasons that are unclear, the Department of Health selected only 50 restaurants and bars to be named in the lawsuits, and did not name any other type of business such as gyms, grocery stores or department stores that were also not in compliance.

It is unclear as to what the Department of Health hopes to accomplish by these lawsuits. These lawsuits seem to be for the purpose of trying to establish new civil authority for the Department of Health. There is also a claim for profit damages from businesses that did not make a profit in 2020.

If there is to be any further enforcement of the statements of the Governor and Department of Health, that enforcement should be made through the already existing enforcement systems of the Department of Agriculture or the Pennsylvania Liquor Control Board. The Department of Agriculture and Liquor Control Board have the statutory authority to oversee all operations of restaurants and bars in Pennsylvania.

The undersigned believe that these lawsuits have not been brought in good faith and are a waste of government time and resources. Proceeding with lawsuits such as these will only serve to further harm businesses that are barely surviving. The continued existence of these businesses is necessary for their employees, their vendors, their communities, and the Commonwealth. The undersigned hereby urges that the Department of Health withdraw these lawsuits.

Respectfully Signed,



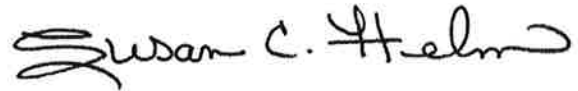
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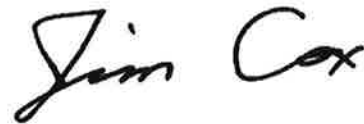
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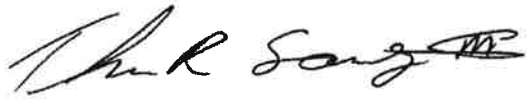
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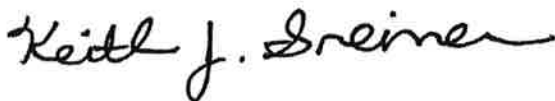
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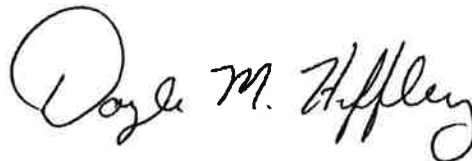
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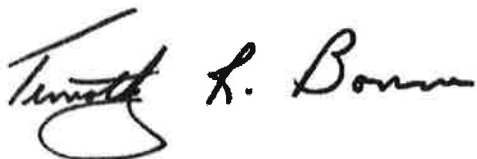
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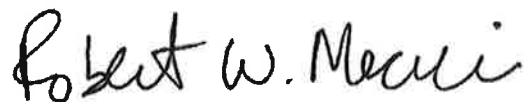
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CC: Russell Redding; Pennsylvania Secretary of Agriculture