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PHILIP D. MURPHY, in his	:	SUPERIOR COURT OF NEW JERSEY
official capacity as the	:	MERCER COUNTY VICINAGE
GOVERNOR of the STATE OF NEW	:	CHANCERY DIVISION - GENERAL
JERSEY,	:	EQUITY PART
	:	DOCKET NO.:
	:	
Plaintiff,	:	
	:	<u>CIVIL ACTION</u>
v.	:	
	:	
JOHN MOOR, in his official	:	COMPLAINT
capacity as the MAYOR of the	:	
CITY OF ASBURY PARK; the CITY	:	
OF ASBURY PARK; JANE DOES 1-	:	
10 (in their official capacity	:	
as agents or officers of the	:	
City of Asbury Park); and XYZ	:	
AGENCIES 1-10 (in their	:	
official capacity as agencies	:	
or offices of the City of	:	
Asbury Park).	:	
	:	
Defendants.	:	

Plaintiff, Philip D. Murphy, in his official capacity as the Governor of the State of New Jersey, by Gurbir S. Grewal, Attorney General of New Jersey (Christopher Weber, Deputy Attorney General, appearing), by way of complaint, seeking to enjoin and restrain defendants, John Moor (in his official capacity as the Mayor of

the City of Asbury Park) and the City of Asbury Park from executing, implementing, or otherwise enforcing City of Asbury Park Resolution No. 2020-187 states:

THE PARTIES AND VENUE

1. Plaintiff is the Governor of the State of New Jersey, and at all relevant times was acting in his official capacity under the authority afforded to him by Article V of the New Jersey Constitution, and all other rights and powers vested in him by the Legislature. Plaintiff maintains a principal place of business at 225 West State Street, Trenton, New Jersey 08625.
2. Defendant John Moor is the Mayor of the City of Asbury Park. Defendant Moor maintains a principal place of business at 1 Municipal Plaza, Asbury Park, New Jersey 07712.
3. Jane Does 1-10 are officers and agents employed by, and otherwise acting on behalf of, the City of Asbury Park and/or its offices or agencies.
4. XYZ Agencies 1-10 are offices and agencies incorporated by, and/or otherwise acting on behalf of, the City of Asbury Park and its officers, agencies and instruments.
5. As set forth herein, venue is proper in the Superior Court of New Jersey - Mercer County Vicinage, pursuant to Rule 4:3-2(a)(2), because this action is based on the violation of Executive Orders that were generated and executed in Mercer County.

**PLAINTIFF'S RESPONSE TO COVID-19 -
EXECUTIVE ORDERS**

6. Coronavirus disease 2019 ("COVID-19") is a contagious and - at times - fatal respiratory disease caused by the SARS-CoV-2 virus.
7. In response to the rapid spread of COVID-19, the World Health Organization has declared COVID-19 to be a global pandemic; the President of the United States declared a national emergency pursuant to his constitutional powers and his statutory powers under the National Emergencies Act, 50 U.S.C. §§ 1601 to 1651; and the United States Center for Disease Control and Prevention ("CDC") has issued guidance regarding the necessity for social distancing and other measures to treating and curtailing the spread of COVID-19.
8. The COVID-19 pandemic has devastated New Jersey. As of June 12, 2020, there were at least 165,816 positive cases and 12,443 confirmed deaths in New Jersey.
9. In light of the dangers posed by COVID-19, plaintiff concurrently invoked his powers under the Civilian Defense and Disaster Control Act (DCA), N.J.S.A. App. A:9-30 to -63, and the Emergency Health Powers Act (EHPA), N.J.S.A. 26:13-1 to -31, and issued an Executive Order on March 9, 2020, declaring both a State of Emergency and a Public Health Emergency. See Executive Order No. 103 (2020). The Public

Health Emergency under the EHPA has been extended by Executive Orders No. 119, 138, and 151.

10. Recognizing the need for the State to have a single policy and not multifarious and potentially confusing and contradictory policies at either the State or local level, plaintiff directed in EO103 that the "State Director of Emergency Management, in conjunction with the Commissioner of DOH, . . . *coordinate* the relief effort from this emergency with all governmental agencies." (emphasis added).
11. Further, "in order to ensure the most effective and expeditious implementation" of containment and mitigation efforts, plaintiff ordered the "State Director of Emergency Management, in conjunction with the Commissioner of DOH," to "*supervise and coordinate* all activities of all State, regional and local political bodies and agencies." (emphasis added).
12. EO103 further mandates that it is "the duty" of "every political subdivision in this State" and each official thereof "to *cooperate fully* with the State Director of Emergency Management and the Commissioner of DOH in all matters concerning this state of emergency." (emphasis added).
13. Invoking N.J.S.A. App. A: 9-40, plaintiff directed that "no municipality, county, or any other agency or political

subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution *which will or might in any way conflict* with any of the provisions of" E0103 "or which will *in any way interfere with or impede* the achievement of the purposes of" such Order. (emphasis added).

14. In recognition of CDC's guidance that mitigation of COVID-19 requires every effort to reduce the rate of community spread and that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another, Governor Murphy issued Executive Order No. 107 on March 21, 2020. Executive Order 107 expressly limits all restaurants, bars, and other dining establishments to offering only food delivery and/or take-out services. See Executive Order No. 107 ("EO107").
15. To maintain a unified command in mitigating the spread of COVID-19, the Governor issued Executive Order 108, which expressly invalidates any county or municipal action that conflicts with any limitations imposed on any business's scope of service or hours of operation. The order expressly states: "[N]o municipality, county, or other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution, which will or might in any way conflict with any of the provisions of Executive Order No. 107 (2020)." (emphasis added).

16. Even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 require that a considerable number of the State's protective measures remain in place, both to reduce additional new infections and to save lives.
17. In consultation with officials from the Department of Health, plaintiff announced a multi-stage plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification.
18. As of June 11, 2020, the State is in the second stage of the reopening process and has begun to relax restrictions on low-risk activities where appropriately safeguarded, including the resumption of certain outdoor activities, including outdoor dining that can meet safeguarding and modification guidelines.
19. Consistent with this plan, plaintiff has issued a number of Executive Orders, including Executive Order 150, which lifted prior prohibitions on *outdoor* dining, given repeated observations from public health experts, including the CDC, that outdoor environments present reduced risks of COVID-19 transmission as compared to indoor environments. But given the risks of COVID-19 transmission involved, E0150 did not permit indoor patronage at food and beverage establishments.

Instead, Paragraph 1(e) made clear that any food and beverage establishments offering outdoor dining had to “[p]rohibit patrons from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishment in order to access the outdoor area, or to use the restroom.”

20. As public health experts have observed, even as the State allows outdoor dining with reasonable restrictions, the extensive interactions that occur at indoor food and beverage establishments continue to present a significant risk of community spread, and so the restrictions on such indoor establishments remain in place.

21. Closed environments, such as indoor food and beverage establishments, permit extensive and prolonged interactions, and close person-to-person contact with shared ventilation and air-flow. This presents a significant public health risk unnecessarily increasing the potential of COVID-19 exposure through community spread.

22. EO150 mandated that “every official, employee, or agent of every political subdivision in this State” shall “cooperate fully in all matters concerning this Executive Order.” And just like EO 108 had done, it reiterated that “[n]o municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order,

rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of Executive Order No. 150 (2020), or which will or might in any way interfere with or impede its achievement.”

THE IMPORTANCE OF A COORDINATED AND UNIFIED COMMAND STRUCTURE

23. During a public health emergency such as the outbreak of COVID-19, it is imperative that responses to a global pandemic and state of emergency be well coordinated. Coordination is essential to provide consistency of action, to avoid duplication of efforts, to prevent unnecessary use of critical resources, and to ensure accurate and prompt communications with emergency personnel and the public.
24. Unified command is the best and perhaps only way that the coordination needed during an emergency can be attained. Here, plaintiff established such a unified command structure through his Executive Orders and concurrent Administrative Orders executed by the State Director of the Office of Emergency Management (collectively “State Orders”).
25. When municipalities or counties impose any rules that are at variance with State Orders, their actions erode, undermine, and confound the benefits of this unified command.
26. For instance, local mandates at variance with State Orders cause, or risk causing, confusion among members of the public by creating requirements that are different and in places

contrary to State Orders. This could cause members of the public to participate in activities that plaintiff has not determined safe or appropriate at this time and for which DOH has not yet determined all the appropriate health and social distancing and sanitization standards.

27. Moreover, because individuals freely travel between different municipalities, a rule allowing for additional person-to-person contact in one town will invariably lead to the spread of the communicable disease in surrounding towns and across the State, which is precisely what the Governor's Executive Orders seek to prevent.

28. New Jersey's statutes reflect this need. The DCA sets forth that, in an Emergency, "It shall be the duty of the members of the governing body and of each and every officer, agent and employee of every political subdivision of this State and of each member of all other governmental bodies, agencies and authorities of any nature whatsoever fully to co-operate with the Governor and the civilian defense director in all matters affecting any emergency as defined by this act." N.J.S.A. App. A:9-40. The statute also establishes that "it shall be unlawful for any municipality or other subdivision or any other governmental agency of this State to adopt any rule or regulation or to enforce any such rule or regulation that may be at variance with any such order, rule or regulation

established by the Governor.” Ibid.

29. Finally, the same statute confirms that “In the event of a dispute on the question of whether or not any such rule or regulation is at variance with an order, rule or regulation established by the Governor under this act, the determination of the Governor shall control.” Ibid.
30. Through the language of EO150, plaintiff determined that the incremental and controlled opening of food and beverage establishments for on-premises dining could be permitted, but limited to outdoor spaces with strict health and safety protocols. Therefore, there is a need for uniformity in order to respond effectively to the COVID-19 crisis.

CITY OF ASBURY PARK RESOLUTION 2020-187

31. As outlined below, defendants - without authorization from and over the objection of the State - have taken it upon themselves to issue a local resolution in contravention of the Governor’s Executive Orders and the law.
32. In particular, on June 10, 2020, defendants passed City of Asbury Park Resolution No. 2020-187 (“APR 2020-187” or the “Resolution”), approving the reopening of “indoor food and beverage service[s]” in contravention of EOs 107, 108 and 150. APR 2020-187 was certified on June 11, 2020.
33. EOs 107, 108, and 150 reflect a judgment that municipalities are not free to set their own divergent health measures

without approval of the State and its health officials.

34. Specifically, while EOs 107 and 150 prohibit the consumption of food and beverages at indoor areas of an establishment, the Resolution unilaterally and without exception permits indoor dining services. In particular, Paragraph 1(e) of EO150 expressly prohibits "patrons from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishments in order to access the outdoor area, or to use the restroom." Moreover, Paragraphs 2, 8, and 9(e) of EO107 prohibit businesses from offering indoor food and beverage services.
35. EO108 explicitly pre-empts and invalidates any local or municipal order, ordinance or resolution which contravenes EO107, and EO 150 explicitly pre-empts and invalidates any local or municipal order, ordinance, or resolution which contravenes that Order.
36. Therefore, APR 2020-187 contradicts express directives in EOs 107, 108, and 150. The Resolution also unlawfully disrupts plaintiff's careful calibration of competing interests, and sows confusion among the citizenry, who need the State to act with one voice during an emergency.
37. Despite being directed to revise its resolution, defendants have refused to revise or rescind APR 2020-187 or to comply

with the Governor's Executive Orders and the law.

COUNT ONE - PREEMPTION

38. Plaintiff repeats each and every allegation set forth in paragraphs 1-42 as if fully set forth herein.
39. Plaintiff, in his capacity as the Governor of the State of New Jersey, retains the authority to take measures necessary to protect the safety, health and welfare of the public during public health emergencies and states of emergency. N.J.S.A. App. A:9-30 to -63; N.J.S.A. 26:13-1 to -31; N.J. Const. art. V, § 1.
40. EOs 107, 108, and 150 were executed in furtherance of plaintiff's objective to protect the safety, health and welfare of the public during a public health emergency and state of emergency.
41. Moreover, as outlined above, the DCA confirms that "it shall be unlawful for any municipality or other subdivision or any other governmental agency of this State to adopt any rule or regulation or to enforce any such rule or regulation that may be at variance with" any order, rule or regulation established by the Governor" pursuant to those emergency powers, and that "In the event of a dispute on the question of whether or not any such rule or regulation is at variance with an order, rule or regulation established by the Governor under this act, the determination of the Governor shall control."

N.J.S.A. App. A: 9-40.

42. The Executive Orders preempt APR 2020-187.

WHEREFORE, and by reason of the foregoing, plaintiff demands judgment in his favor and against defendants, granting the following relief:

- A. Declaring that City of Asbury Park Resolution 2020-187 ("APR 2020-187"), adopted June 10, 2020, and certified June 11, 2020, be and hereby is preempted by Executive Orders 107, 108, and 150;
- B. Enjoining and restraining defendants and any and all of their employees, representatives, agents or instruments from executing, implementing or otherwise enforcing Paragraph 2 of APR 2020-187, and any and all portions thereof authorizing the operation of indoor food and beverage services for indoor dining purposes;
- C. Such other relief as this court deems appropriate.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Christopher Weber
Christopher Weber
Deputy Attorney General

Dated: June 12, 2020

DESIGNATION OF TRIAL COUNSEL

Please take notice that Christopher Weber, Deputy Attorney General, is hereby designated as trial counsel in the above-captioned matter.

/s/Christopher Weber _____
Christopher Weber
Deputy Attorney General

Dated: June 12, 2020

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify, pursuant to Rule 4:5-1(b) (2), that to the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I further certify that, to defendants' knowledge, no other parties should be joined in the within action.

/s/Christopher Weber _____
Christopher Weber
Deputy Attorney General

Dated: June 12, 2020

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

I hereby certify, pursuant to Rule 4:5-1(b)(3) and Rule 1:38-7(c), that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

/s/Christopher Weber
Christopher Weber
Deputy Attorney General

Dated: June 12, 2020