UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

TROPICAL CHILL CORP.; ALEXANDRA IRIZZARY; YASMIN VEGA; AND RENE MATOS,

Plaintiffs,

v.

HON. PEDRO R. PIERLUISI URRUTIA, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO, HON. CARLOS R. MELLADO LÓPEZ, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HEALTH OF THE COMMONWEALTH OF PUERTO RICO,

Defendants.

Civil No. 21-1411

JURY TRIAL DEMANDED

Complaint for Declaratory and Injunctive Relief

The plaintiffs, Tropical Chill Corp., Alexandra Irizarry, Yasmin Vega, and Rene Matos respectfully submit this complaint for declaratory and injunctive relief arising under the Fourteenth Amendment, the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-§ 3 2000bb, as well as pendent claims against the defendants, Hon. Pedro R. Pierluisi Urrutia, in his official capacity as governor of the Commonwealth of Puerto Rico, and Hon. Carlos R. Mellado López, in his official capacity as Secretary of Health of the Commonwealth of Puerto Rico.

Introduction

- 1. This § 1983 action challenges the constitutionality of the Commonwealth of Puerto Rico's series of executive orders, particularly the imposition of vaccination-verification duties on the private sector, as described in Executive Orders Nos. 2021-062–064. It also impugns the constitutionality of the Health Secretary's Regulation No. 138-A, Exhibit No. 1, which amends Regulation No. 138 for the Issuance of Health Certificates in Puerto Rico ("Regulation 138-A") to require proof of COVID-19 vaccination.
- 2. The world is coming to grips with the undeniable reality that COVID-19 is here to stay, an endemic part of our ecosystem like the coronaviruses that cause the common cold. *Cf.* Jeffrey A. Singer, *Society Will Never Be Free of COVID-19—It's Time to Embrace Harm Reduction*, Cato Inst. Pandemics & Policy, Aug. 25. 2021, https://bit.ly/3ksoyRx.
- 3. The government must prepare for the long-term engagement with COVID as an endemic phenomenon and strengthen the healthcare system in hospitals and in the community to succeed in this task. *See Position Paper The Science and the Ethics Regarding the Risk Posed by Non-Vaccinated Individuals*, The Israeli Public Emergency Council for the Covid19 Crisis, August 11, 2021, https://bit.ly/3sRz4FD.
- 4. Vaccination should be treated as a primary means for providing protection against severe illness or death, especially for persons at high risk—not to reduce cases. *See id.*
- 5. There is no scientific evidence whatsoever supporting the claim that non-vaccinated individuals are risking the public's health in any way more than vaccinated people or that their lack of being vaccinated is a factor than facilitates the continuation of the pandemic

or that causes a threat of collapse to the healthcare system. The vaccinated individuals have their own umbrella of protection, which continues to protect them from severe illness regardless of the person who transmitted the virus to them. *See id.*

- 6. Because COVID is here to stay, an indefinite state of emergency, with extraordinary government—and especially executive powers—that restrict individual liberties is unconstitutional.
- 7. Coercion and threats do not motivate or foster healthy behaviors; public-health policy is effective only when it is based on education and dialogue.
- 8. As explained below, contrary to public perception, and partially because of inaccurate or incomplete reporting, Puerto Rico's low rates of COVID infection, hospitalization, and death, combined with its high vaccination rates and low burdening of the health care system—despite low institutional capacity across a variety of sectors—make COVID-vaccination mandates particularly unreasonable in the Commonwealth.
- 9. The plaintiffs, all private citizens (except Tropical Chill) are all residents of Puerto Rico and are all suffering damages from the challenged government actions.
- 10. From July 30 to August 19, 2021, the defendant, Governor Pierluisi, enacted a series of executive orders related to COVID and the enforcement of vaccination mandates. These orders have come in waves, rolling in like the Caribbean waters at high tide. The ones challenged here are Executive Order ("EO") Nos. 2021 062–064 (collectively, the "Rolling EOs").

- 11. The Rolling EOs not only violate the plaintiffs' constitutional rights—they are arbitrary and capricious, and their means are not "closely to drawn to avoid unnecessary abridgment of" the plaintiffs' rights, *McCutcheon v. Federal Election Commission*, 572 U.S. 185, 197 (2014)—but also encroach on the separation of powers by exercising legislative powers that have either not been delegated or cannot be delegated to the executive under the Puerto Rico constitution, further to the detriment of individual rights and freedoms that the rule of law is meant to protect.
- 12. COVID statistics further bolster the claim that now, 18 months after the pandemic's onset, the Commonwealth's government cannot continue to have unfettered emergency powers that violate its citizens' individual liberties.
- 13. Although institutional capacity is lower in Puerto Rico than in any mainland U.S. jurisdiction, the pandemic never came close to jeopardizing the normal operations of our health care system: We never even had to truly worry about "flattening the curve."
- 14. Puerto Rico reached over 60% full vaccination by May 31, 2021. And as of August 26, 2021, the Puerto Rio Department of Health reported that 69.6% of eligible recipients have been fully vaccinated and 78.4% of eligible recipients have received at least one dose.
- 15. Now, with over 69.6% of the eligible population fully vaccinated, 80.6% of it with at least one dose, and 82% of 60 years old or older with at least one dose and 74% fully vaccinated, our healthcare system will not be stressed going forward.
- 16. Puerto Rico currently ranks seventh among U.S. states and territories in percentage of total population fully vaccinated. And as the vaccination rate further increases, the

percentage of total cases among the vaccinated will naturally increase—but that, too, will not be alarming because the total rate of cases, hospitalizations, and deaths will go down the higher the vaccination rate goes up.

17. Still, the Rolling EOs justify their strong measures by referencing the "positivity rate," meaning that a high percentage of COVID tests are coming back positive. But this a classic denominator problem: not that many Puerto Ricans are being tested —75% less than on the mainland—which means that it's largely those who are hospitalized or otherwise displaying obvious symptoms would be the ones getting tested. In other words, there's no correlation between the "positivity rate" and the percentage of the population that has COVID.

18. A better—more important leading—indicator is the effective reproductive number (Rt), which gauges epidemic growth. Rt is the average number of people that an individual infected on day t is expected to go on to infect. When Rt is above 1, we expect cases to increase in the near future. When Rt is below one, we expect cases to decrease in the near future. As of August 26, 2021, Puerto Rico's Rt is 0.72, after dropping below 1 on August 14, it has continued a downward spiral since then. See The covidestim project (Stanford, Yale and Harvard Colb), Effective reproduction number (Rt) (Puerto Rico) (27Aug2021), https://covidestim.org/.

- 19. Be that is it may, the reason for Puerto Rico's low amount of testing is quite simple: too many obstacles and burdens (*e.g.*, medical referral, health insurance plan, \$50–\$100+cost) and extremely limited to non-existent public testing facilities.
- 20. But because COVID tests are not as readily available in Puerto Rico as they are on the mainland, the government is using its own lack of institutional capacity to justify imposing severe burdens on individuals.
- 21. The Rolling EOs and Regulation 138-A suffer from similar but not identical infirmities, including vagueness, overbreadth, and seemingly arbitrary terms both facially and as implemented.
- 22. The Rolling EOs' so-called religious and medical exemptions themselves are vague: it is unclear whether these so-called exceptions are even real "exemptions," because those who decline vaccination for other reasons have the same alternative (weekly testing) as those with religious objections or medical exemptions—except those with "legitimate" objections must jump additional hoops with medical certificates and clerical affidavits.
- 23. The Rolling EOs have already been subject to different interpretations by different government agencies, burdening employees, business owners, travelers, and others in seemingly arbitrary ways.
- 24. The inconsistent and sometimes contradictory way in which the Rolling EOs requirements have been rolled out across agencies and businesses bolsters the arbitrariness of the government action.

- 25. The above litany of facts demonstrates that the Puerto Rico government is willing to do anything to force the plaintiffs, and other Puerto Ricans, even by deceit, into getting vaccinated, with little if any regard to their fundamental rights to personal autonomy, religious beliefs, and medical choice.
- 26. And the government is encroaching on private-sector employees' and entrepreneurs' right to earn an honest living, including conditioning health and occupational licenses on vaccination. It's a classic unconstitutional condition.
- 27. What's more, the government is forcing the private sector to do its dirty work, in effect commandeering businesses large and small to verify vaccination and police testing.
- 28. All this, when the unvaccinated only threaten themselves and other unvaccinated people. No vaccine confers absolute immunity, but someone who's vaccinated has little to fear from the decreasing minority of fellow citizens who aren't.
- 29. For the reasons stated above and below, the Rolling EOs and Regulation 138–A violate the economic liberty and property rights protected by the Fourteenth Amendment, which includes the right to earn an honest living, to contract with customers in mutually beneficial voluntary exchange, and to use and enjoy one's property.
- 30. The Rolling EOs and Regulation 138–A also violate the Fourteenth Amendment rights of personal autonomy and bodily integrity, and the right to reject medical treatment.
- 31. In requiring proof of vaccination under one of the "tests" for a health certificate, Regulation 138-A is arbitrary and capricious: One could be vaccinated and still get COVID.

Indeed, mandatory regular testing—assuming it's government-provided and paid for—would have greater justification than mandatory vaccination.

32. And because they contain unlawful threats of criminal prosecution unsupported under Puerto Rico law, the Rolling EOs are null and void.

Jurisdiction and Venue

- 33. This Court has jurisdiction over all claims under 28 U.S.C. §§ 1331 and 1343(a), and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
- 34. This Court also has specific personal jurisdiction over the defendant, as the events giving rise to the claims took place in this forum.
- 35. Venue is proper under 28 U.S.C. § 1391, because all parties reside in this District, and because a substantial part of the events prompting the claims occurred in this District.

The Parties

- 36. Plaintiff Tropical Chill is a Puerto Rico corporation that operates three ice-cream stores in San Juan, Guaynabo, and Dorado.
- 37. Plaintiff Alexandra Irizarry, a resident of Manati, Puerto Rico, where she works in a pharmacy.
- 38. Plaintiff Yasmin Vega, resident of Mayaguez, Puerto Rico, is the owner of an Airbnb business named Hillside Cabin.
- 39. Plaintiff Rene Matos, a resident of San German, Puerto Rico, has been working as a stock clerk for a supermarket for over three years.

- 40. All the plaintiffs genuinely and strongly believe that vaccination must be voluntary and based on their—or their clients' or customers'—personal assessment in good conscience of the medical risks/benefits and morality of a particular vaccine.
- 41. As to the Rolling EOs, the defendant is Hon. Pedro R. Pierluisi Urrutia, in his official capacity as governor of the Commonwealth of Puerto Rico, who, under color of state law, promulgated the Rolling EOs.
- 42. As to the Health Certificate Regulation, the defendant is Hon. Carlos Mellado, in his official capacity as Secretary of Health Commonwealth of Puerto Rico, who, under color of state law, enacted Regulation 138-A.

Facts Common to All Claims

A. Regulation 138-A, Rolling EOs, and the So-Called Exemptions

- 43. From July 30 to August 19, 2021, the governor enacted a series of Rolling EOs affecting non-government workers and private businesses.
- 44. On July 30, the Governor and the Health Secretary announced in pertinent part that that the health-certificate requirements would be amended to require COVID vaccination.
- 45. On August 5, the Health Secretary enacted Regulation 138-A, which became effective "immediately." Exhibit No. 1 at 3.
- 46. Regulation 138-A made it clear that it was "adopted with the purpose of expressly establishing the requirement to present the vaccination card against COVID-19 or the 'COVID-19 Vaccination Record Card' as an essential document for a doctor to issue a health certificate." *Id.* at 2.

- 47. It defines "COVID-19 Vaccination Record Card" as the "official vaccination card against COVID-19 issued by the CDC, which identifies individuals who have been completely inoculated with the aforementioned virus." *Id*.
- 48. Although the COVID-19 Vaccination Record Card is not a "test," Regulation 138-A nonsensically added the COVID vaccine as part of the "tests" required to issue a health certificate, which, as relevant here, is legally required to work in pharmacies, as well as for many other occupational licenses.
- 49. Regulation 138-A thus amended Article X as follows: 1. "No doctor may issue health certificates without the following: (1) a medical evaluation, (2) having certified that the person has shown evidence of vaccination against COVID-19 (COVID-19 Vaccination Record Card) with the series of complete vaccine, issued by the CDC, (3) the results of the in vitro tuberculin or tuberculosis test and (4) the serological test for syphilis, with their respective confirmatory tests when applicable." *Id*.
- 50. Regulation 138-A contains a health exception, not relevant here. *Id. at 3*.
- 51. "By way of exception," Regulation 138-A further provides that the "Health Certificate be issued to people not inoculated for religious reasons, as long as the vaccine goes against the dogmas of the patient's religion. The doctor must certify that he was shown the sworn statement required by the Department of Health for these cases, in accordance with the Executive Orders in force." *Id*.

- 52. Meanwhile and pertinently, that same day, August 5, 2021, the Governor issued Executive Order No. 2021-062 (EO 062) "to require the COVID-19 vaccine to . . . the health and hospitality sectors." Exhibit No. 2.
- 53. Section 2 of EO 062 generally requires that all employees of working in the health sector—which includes pharmacies—, regardless of their position, to have been inoculated with a COVID-19 vaccine that has been granted Emergency Use Authorization by the FDA. *Id.*, § 2, pp. 8-9.
- 54. Section 4 of EO 062 generally requires that all guests of hotels, hostels, and "Short Term Rentals," managed independently or through platforms, as relevant here, Airbnb, to have been inoculated with a COVID-19 vaccine that has been granted Emergency Use Authorization by the FDA. *Id.*, § 4, p. 10.
- 55. Sections 2 and 4 of EO 062 refer to two so-called "exemptions" in section 5.
- 56. Section 5's exemptions are for: (1) for persons with compromised immune systems or any other medical contraindication (medical exemptions), in which case they have to submit a medical certificate to that effect; and (2) for persons who refuse to get vaccinated due their religious beliefs (religious exemption), in which case they are required to execute an affidavit attesting to their religious beliefs. The "sworn statement required" by EO 062, in turn mandates that the would-be religious objector obtain an affidavit, under penalty of perjury, attesting that they cannot be inoculated due to their religious beliefs. *Id.*, § 5, p. 11. 57. Sections 5 of EO 062 further dictates that those to whom the so-called exemptions

apply, are also required to present a negative COVID-19 test result on a weekly basis from

a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces. *Id*.

- 58. A logical reading of sections 2 and 4 of EO 062 suggests that people who are not vaccinated and who do not fall within any of the exemption will not be allowed to work in the health and hospitality sectors, and guests will not be allowed to stay the night in hotels or Airbnb.
- 59. But section 6 of EO 062 casts serious doubts on whether the so-called medical and religious exemptions included in Section 5 are even real "exemptions."
- 60. The reason is that Section 6, titled "DENIAL OF VACCINATION," states, in pertinent part, that any health sector employee or Airbnb guest "who does not present their immunization certificate ('COVID-19 Vaccination Record Card')" or document proving that they have completed or started their vaccination process against COVID-19 and "to whom no exemption is applicable" must present the very same COVID-19 test results, "pursuant to the conditions stated in Section 5 of this order." Id., § 6, pp. 13-4 (emphasis added).
 61. Read literally, the above means that an employee or guest is required to submit an affidavit only if he or she invokes a religious faith or a medical condition. If the employee doesn't invoke an exception, he or she may "work in person" in the health sector or be a

guest in a hotel or Airbnb only by submitting to weekly COVID tests, without any need to submit a medical certificate or affidavit.

- 62. The above conclusion is buttressed by the Puerto Rico Tourism Company's—the agency in charge of establishing the applicable guidelines and regulations to enforce EO 062, see id., § 7—Guidelines Re: Updated guidance for tourism businesses for the implementation of the Executive Order 2021-062. Exhibit No. 3 (Tourism Guidelines).
- 63. Curiously, the Tourism Guidelines lack any mention to religious or medical exemptions.
- 64. The way that OE 062 is drafted together with the governor's expressions to the public make pellucid that the government is purposely deceiving the public into believing that only if they have a medical condition or religious objection may they choose to submit to weekly COVID tests instead of getting vaccinated. *See, e.g.,* Press Release by the Governor's Office, re: EO 2021-062, Exhibit No. 4 at 1 ("the exceptions will be the persons with medical conditions... [and] persons who, for religious reasons decided not to get vaccinated...".) 65. EO 2021-063 "For the Purposes of Requiring Mandatory COVID-19 Vaccinations and Screening for the Restaurant, Bar, Theater, Cinema, Stadium, And Activity Center Sectors, Among Others," Exhibit No. 5 (OE 063), and EO 2021-064 "To Implement Measures Against the COVI-19 in the Sectors of Gyms, Beauty Salons, Barber Shops, Spa, Childcare, Casinos, Supermarkets, Grocery Stores, Among Others," Exhibit No. 6 (OE 64) suffer from the same infirmities as OE 062.

- 66. EOs 063 and 064 require, as a rule, that both workers and patrons of the respective economic sectors—except for patrons in supermarkets, grocery stores, and pharmacies—be inoculated with a EUA COVID-19 vaccine. *See* Exhibit 5, §1, p. 8; Exhibit No. 6, §§ 1 & 4, pp. 9-10 & 12.
- 67. For the workers in the above-mentioned sectors, like Plaintiff Matos, who works in a supermarket, EOs 063 and 064 include the same so-called medical and religious exemptions as in EO 062. *See* Exhibit 5, § 2, p. 9-10; Exhibit 6, § 2, pp. 10-11.
- 68. As with EO 062, the so-called exemptions for workers in EOs 63 and 64 seem to be worthless. This is because Sections 3 of both EOs, titled "Employees Who Decline Vaccination" (§ 3 of both EOs 063 & 064), allow any employee in the respective sectors, regardless of exemptions, to work in the facilities as long as they present the very same COVID-19 test results weekly that are required for those with religious or medical exemptions.
- 69. EOs 063 and 064 require that all patrons of restaurants, bars, theaters, beauty salons, gyms, supermarkets, and grocery shops, among others, present proof of vaccination or a negative COVID-19 test result. Otherwise, those establishments are supposed to deny those customers entry into their businesses.
- 70. As distinct from the employees covered under EOs 063 and 064, who must present their test results on a *weekly basis*, patrons are required to provide a negative test result not older than 72 hours *each time* they visit one of the covered businesses. *See* EO 063, § 4, pp. 11-12; EO 064, § 4, p. 12.

- 71. The only option for businesses that do not want to require patrons to show proof of vaccination, or negative COVID test results is to operate at 50% capacity. *See* EO 063, § 5, p. 12; EO 064, § 4, p. 13.
- 72. This is a good place to note that the process for taking a COVID-19 test in Puerto Rico is quite burdensome:
 - a. The tests are very expensive for people without health insurance, ranging from \$50 to \$100.
 - b. For people with health insurance, the process requires them to obtain a medical referral from a physician before getting tested, which cost between \$10 and \$15, depending on the individual's health insurance plan.
 - c. Free public testing facilities are limited throughout the island and usually require test-takers to spend several hours waiting in line.
- 73. There are serious consequences for those who refuse to comply with the EOs, including the potential for six months of jail time and a \$5,000 fine:

Failure to comply with the provisions of this Executive Order by any person or business shall result in the imposition of the criminal penalties and fines defined under the provisions of Article 5.14 of Act 20-2017, as amended, which sets a penalty of imprisonment not to exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties, at the discretion of the court and/or any applicable law. Furthermore, in accordance with the provisions of Art. 33 of the Department of Health Act, "[a]ny natural or juridical person who violates the provisions of this Act or the regulations issued by the Department of Health thereunder shall incur a misdemeanor, and upon conviction, may be sentenced to imprisonment that shall not exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties in the discretion of the court."

Any person who fails to comply with the provisions of this Order shall be subject to criminal proceedings, which shall be initiated without any delay by the Public Prosecutor, whom, in turn, must request bail to be set in accordance with the Rules of Criminal Procedure.

EOs 062, § 8; 063, § 9; 064, § 9.

B. The Currently Unjustified and Never-ending COVID Emergency in Puerto Rico

- 74. The government has a responsibility to maintain public health in a way that secures the lives and liberties of all citizens. Indeed, responding to pandemics, like responding to invasions, are one of the quintessential government roles.
- 75. Pandemics may require the state to perform certain interventions to ensure that demands on the healthcare system never exceed its capacity.
- 76. The healthcare system capacity to attend to COVID patients includes the availability of medical equipment, hospital beds, hospital ICU beds, and ventilators.
- 77. The highest levels of adult hospital beds, ICU beds and ventilators during the pandemic in Puerto Rico, prior to vaccine availability, were 111 (16.5%) ICU beds, 657 (9.3%) hospital beds and 118 (10.3%) ventilators. All one-day highs and all occurred at different points in time (December 10, 20202, November 24, 2020 and December 12, 2020 respectively). At that time, significant restrictions had been put in by executive order. *Data source*, https://covid19datos.salud.gov.pr/#sistemas_salud.
- 78. The daily average since August 1, 2020 to August 26, 2021, has been 316 adult hospital beds (4.5%), 58 adult ICU hospital beds (8.7%), and 45 adult ventilators (3.9%). *Id*.

- 79. The empirical data shows that the "State of Emergency" promulgated nearly 18 months ago is no longer tenable.
- 80. From the start of the pandemic in January-February 2020—even before the emergency declaration—public health experts used both leading (*e.g.*, infection rates) and lagging (*e.g.*, hospitalization rates) factors without a full understanding of the correlation between them. They implemented measures aimed at the leading indicators that did not affect the lagging indicators.
- 81. As scientific studies and empirical data showed, however, COVID-19 much more significantly affected certain groups, namely, the elderly (typically defined as people over 60 or 65 years old) and people with predefined autoimmune diseases and other chronic health issues. This led, at the beginning, the correlation between leading factors within a community (total cases) and lagging factors (hospitalizations and deaths) to show a misleading presentation of the pandemic's development.
- 82. Over time, a correlation was established between R₀ (how infectious each person with the disease is), "positivity" rate (the rate of infection in society), and the number of positive cases and hospitalizations.
- 83. Eventually, and sooner than expected, however, the most important exogenous shock possible, a vaccine, was introduced in that correlation function.
- 84. In early 2021, the Food and Drug Administration authorized three vaccines (Pfizer-BioNtech, Moderna, J&J/Janssen) for emergency use in the United States (including Puerto Rico). On August 23, 2021, the FDA gave the Pfizer vaccine its final approval.

- 85. The introduction of these vaccines changed the previous relationship between leading and lagging factors. In short, vaccination significantly reduced the spread of COVID.
- 86. Once vaccines with such effective results were introduced, concerns that our hospitals could be overwhelmed by an excess of COVID cases have been reduced.
- 87. Moreover, as people gain natural immunization protection, developed after a SARS-CoV-2 infection, they gained from six to 13 times better shield against the Delta variant of the pandemic coronavirus than the two doses of the Pfizer-BioNTech vaccine, up to six months after getting natural immunization.
- 88. So natural immunized people are much less likely than vaccinated people to get Delta, develop symptoms from it, or become hospitalized with serious COVID-19, up to six (6) months after the event. See MedRxiv, Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections (August 25, 2021), https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1; Science, Having SARS-CoV-2 once confers much greater immunity than a vaccine—but no infection parties, please (August 26, 2021), https://www.sciencemag.org/news/2021/08/having-sars-cov-2-once-confers-much-greater-immunity-vaccine-no-infection-parties.
- 89. Although, as reflected below, Puerto Rico's health system was never strained by COVID, now, with the introduction of vaccines and despite the advent of the Delta variant, it is highly unlikely that it could be placed in jeopardy.
- 90. From January 21, 2020 to August 26, 2021, Puerto Rico has had 5,231 cases of COVID per 100,000 people, which rate is the 53rd of 58 U.S. states and territories (including New

York City and the District of Columbia). *See* CDC, *Data Table for Case Rate by State/Territory*, https://covid.cdc.gov/covid-data-tracker/#cases casesper100k.

- 91. Only Hawaii, Vermont, the Virgin Islands, Northern Mariana Islands, Palau, and Marshall Islands have had fewer cases per 100,000 people than Puerto Rico. We're not sure what's going on in the Green Mountain State, but the rest of these jurisdictions are islands or archipelagos, like Puerto Rico.
- 92. Even though Puerto Rico has the highest elderly population of any state or territory (20.8%), since January 21, 2020 to August 26, 2021, Puerto Rico is 47th of 58 in death rate (86 deaths per 100,000 people) among states and territories (plus New York City and District of Columbia). See Christine L. Himes and Lillian Kilduff, Resource Library, Which U.S. States Have the Older Populations?, PRB, https://www.prb.org/resources/which-usstates-are-the-oldest/; United States Census Bureu, Quick Facts Puerto Rico, https://www.census.gov/quickfacts/PR; CDC, COVID Data Tracker, United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, Data Table for Death Rate by State/Territory, https://covid.cdc.gov/covid-data-tracker/#cases deathsper100k.
- 93. As of August 26, 2021, Puerto Rico's death rate "related to" COVID per 100,000 (86) happens to be 50% lower than the average within the States (165). Being an island (really an archipelago) helps. *See id*.
- 94. As of August 26, 2021, according to the health department's data, Puerto Rico has 69.6% of the eligible population fully vaccinated and over 80.6% of the eligible population

with at least one dose. Of those 60 and older, 82% have received at least one dose, and 74% are fully vaccinated. *See* https://covid19datos.salud.gov.pr/#vacunacion.

- 95. The previous statistics are of course encouraging, but Puerto Rico, as of August 27, 2021, is conversely second to last (ahead only of the U.S. Virgin Islands), in total tests performed per 100,000 people among U.S. jurisdictions since testing started. Indeed, Puerto Rico has always tested for COVID—and continues to test—at rates much lower than in the U.S. states. *See* https://covid.cdc.gov/covid-data-tracker/#cases testsper100k.

 96. Moreover, for the percentage of positivity to properly represent the population, it is imperative that the total number of tests carried out (denominator) be the most representative and constant sample of the population. If not, the testing data can skew towards one side or the other, providing erroneous and misleading conclusions. This is the case in Puerto Rico. The main reason for this statistical slant is the following:
 - a. On the mainland, the Department of Health and Human Services (HHS) created the system of "Community-Based Testing Sites." So COVID-19 tests are available, free of charge, throughout the country in select health centers and pharmacies. See U.S. Department of Health and Human Services, Coronavirus, Community-Based Testing Sites for COVID-19, https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html.
 - b. Indeed, the Family First Coronavirus Response Act ensures that COVID-19 testing is free to anyone in the US, including those without health insurance.

- c. On the mainland, one can take the test, free of charge and without any pre-requisite,
 at CVS, Rite Aid, Walgreens, Wal-Mart, and independent in-network pharmacies.
 Moreover, tests are offered daily, at fixed public locations set up by state
 governments, at no cost and without any prerequisite.
- d. In Puerto Rico, however, the offering of free PCR testing through these stores is extremely limited (less than 5% of the total tests performed). Such free testing is the exception, not the rule.
- e. Test offerings by local or municipal government are even lower, less than 2%. And they are also random, offered only at a particular day, usually a Saturday or Sunday every few months with significant lines and cumbersome processes.
- f. In Puerto Rico, the main source of PCR tests is through private laboratories, which require a medical referral and an insurance plan. Otherwise, test-seekers need to pay between \$50—\$010 or more per test, a significant imposition given the relatively low average incomes of our population. *See* GISCorps COVID-19 Testing Sites Locator, *Locate COVID-19 Testing Sites*), https://www.arcgis.com/apps/webappviewer/index.html?id=2ec47819f57c40598a4 eaf45bf9e0d16.
- 97. The disincentive created by the current health care system for residents of Puerto Rico causes only people who have an underlying need to get tested go through the strenuous process to do so. The people in this category are the people who believe that they have

been exposed, people who have symptoms, people who have traveled, or people whose employers require them to do so, among others.

- 98. The cost and hassle of getting tested creates a natural deterrent for the general population to get tested, which skews Puerto Rico's positivity rate.
- 99. For the percentage of positivity to properly represent the population, it is imperative that the total number of tests carried out (denominator) be the most representative and constant sample of the population. Otherwise, the testing data can skew towards one side or the other, providing erroneous and misleading conclusions. This is the case in Puerto Rico. *See* Public Health Madison & Dane County, *Understanding Percent Positivity*, https://www.publichealthmdc.com/blog/understanding-percent-positivity.
- 100. In Puerto Rico, the "positivity rate" thus does not reflect a proper sample representing the population, so it has always been much higher in Puerto Rico than on the mainland—and is completely unreliable and misleading.
- 101. If tests are predominantly taken by people who feel sick, people who have a reason to be worried about being infected, or people who are already sick in the hospital, there will be more positives from all those people than you would in the general community, so it can be misleading to assume that these inflated positivity rates indicate the level of an infection's spread.
- 102. The Puerto Rico Government does not perform random testing of people and therefore the test positivity statistic is almost meaningless.

stopped using Puerto Rico's positivity rate statistics. *See* John Hopkins, Coronavirus Resource Center, *Puerto Rico*, https://coronavirus.jhu.edu/region/us/puerto-rico.

104. The COVID Tracking Project, one of the nation's trusted aggregators and reporters of coronavirus data and trends, does not publish the positivity rate due to its inaccuracy.

See Intelligencer, The Problem With the Positivity Rate,

103. Indeed, in April 2021, the John Hopkins University Coronavirus Resource Center

https://nymag.com/intelligencer/2020/12/the-problem-with-the-covid-19-positivity-

rate.html.

105. For adult ICU beds the daily average utilization was 5.4% (36 beds). The unused adult beds daily average is at 38% (2,681) and adult ICU beds is at 27% (180 beds). Data source, https://covid19datos.salud.gov.pr/#sistemas_salud. This is almost four times fewer hospital beds (three times fewer for ICU beds) used due to COVID after 60% vaccine implementation, as compared to the entire previous pandemic period.

106. From June 1 to August 26, 2021, our daily average adult hospital utilization is at 2.1% (150 beds).

107. Moreover, Puerto Rico hospitals have always had significant number of extra beds throughout the pandemic, averaging from 40% for regular beds and 30.7% for ICU beds from Aug. 1, 2020, to Aug. 26, 2021. *Data source*, https://covid19datos.salud.gov.pr/#sistemas_salud.

108. To restate an earlier point, Puerto Rico's death rate is less than 50% lower than the average on the mainland. Puerto Rico has had a total of 2,786 deaths related to COVID

since March 17, 2020 up to August 26, 2021. With 86 deaths per 100,000 people—compared to 165 per 100,000 on the mainland—the Commonwealth ranks 47th out of 58 states and territories (and New York City and District of Columbia). *See* https://covid19datos.salud.gov.pr/#defunciones; CDC, COVID Data Tracker, United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, *Data Table for Death Rate by State/Territory*, https://covid.cdc.gov/covid-data-tracker/#cases deathsper100k.

109. It bears noting that these numbers represent deaths "related to" COVID, so they include (a) confirmed COVID-19 deaths, which are deaths of people with one or more positive molecular tests, and (b) likely COVID-19 deaths, which include deaths of: (1) people who meet clinical criteria and evidence epidemiological as defined by the CSTE, without confirmatory tests for COVID-19; (2) people who test positive for antigens and meet the clinical criteria or epidemiological evidence as defined by the CSTE; (3) deaths that meet the criteria for vital statistics in which no evidence of confirmation for COVID-19; and (4) suspicious deaths from COVID-19, which include deaths of people in whom a specific antibody in serum, plasma, or blood, or a specific antigen is detected by immunocytochemistry in an autopsy specimen, which were not reported as confirmed or probable COVID-19 cases.

110. Over 78% (78.1%) of the COVID-related deaths in Puerto Rico have been from those 60 years and older.

- 111. As of August 26, 2021, 82% of the age group 60 years and older has received at least one dose and 74% are fully vaccinated. *See* https://covid19datos.salud.gov.pr/#vacunacion.

 112. From June 1 until August 26, 2021, after 60% of eligible people were fully vaccinated, the case fatality rate is 1.5% and the average daily deaths are 3. The case fatality rate is 1.4% and the average daily deaths are 3 after the advent of the Delta variant (June 15, 2021 until August 26, 2021). The average daily deaths were 6 prior to a 60% full vaccination (March 17, 2020 to May 31, 2021). *Data source*, https://covid19datos.salud.gov.pr/#defunciones.
- 113. Since June 15, 2021, when the Delta variant made its first confirmed appearance in Puerto Rico, up to August 26, 2021, the average daily deaths is 3.5. That is forty percent (40%) less the average daily deaths now, with Delta variant, that prior to the 60% vaccination. *See* https://covid19datos.salud.gov.pr/#defunciones.
- 114. To showcase how miniscule is the COVID situation in Puerto Rico in comparison to its handling and the balance of other societal needs and liberties, here are the actual numbers as of August 26, 2021:
 - a. As of August 26, 2021 (after 17 months), only 140,091 people (4.3%) have tested positive (confirmed) for COVID-19. Of those, 136,065 have recuperated (97.1%), with the smallest amount of these requiring attention by our public health system. Currently, we have approximately 1,232 (0.9%) active cases of COVID and a cumulative total of 2,794 COVID related deaths (2%). *Data source*,

https://covid19datos.salud.gov.pr/#casos,https://covid19datos.salud.gov.pr/#def unciones.

- b. In other words, more than 3,145,783 people (95.7% of the population) have not gotten the virus, or more accurately, never tested positive for it. Currently, there are 0.9% active cases, and we have had 0.085% deaths related to COVID in 17 months.
- c. Moreover, Puerto Rico has, as of August 26, 2021, at least 80.9% of its eligible population with one dose. *See* https://covid19datos.salud.gov.pr/#vacunacion.

Statement of Claims

Count No. I: Violation of Economic Liberty and Property Rights under the Fourteenth Amendment (Plaintiffs Tropical Chill, Irizarry, Matos, and Vega)

- 115. Since March 2020, Tropical Chill's San Juan store is operating exclusively as a drive-through location. The shops in Guaynabo and Dorado lack drive-throughs, so they are operating with walk-ins and takeout.
- 116. The Guaynabo location had to close for six weeks in April–May 2020 because of low traffic and sales volume. All locations have kept thermometers for taking and recording employee and client temperatures as was requested as condition for operation by the Department of Health.
- 117. As soon as vaccines were available, Tropical Chill Corp. required all its employees to get vaccinated.

- 118. The philosophy of Tropical Chill's owners is that vaccination is the way to address this virus, but that it's not their job to police and verify customers' private health information.
- 119. Tropical Chill's main concern with EO No. 63 is that the company would incur additional costs in having an additional employee verify customer vaccine records in each store and would likely upset customers who don't agree with the EO. Tropical Chill's mission is to make its customers happy—an apt mission when one's main product is ice cream—and this mandate undermines its mission.
- 120. Since ice cream shops' customer base is families, including children who cannot be vaccinated before they turn 12, a vaccine mandate chills Tropical Chill's business. Even if young children are exempt, there is confusion over whether and how businesses are supposed to verify age thresholds—Take the parents' word? Ask for a birth certificate? Would a Mickey Mouse Club membership card be enough?—and regardless the Rolling EO regime undermines customer goodwill and brand equity.
- 121. The alternative put forth by the government's passing the buck to the private sector to implement vaccine passports is to operate at 50% capacity, which limits sales volume just as small businesses (those that have survived) start rebounding after a challenging 18 months.
- 122. Instead of incurring in additional costs, upsetting customers, and risk being subject to penalties given EO 63's lack of clarity on enforcement for minors, Tropical Chill decided to lower its capacity in the Dorado and Guaynabo shops by 50%. As a result, since

- August 23, Tropical Chill is allowing only six and 10 customers to enter its ice cream shops, instead of 12 and 20, Dorado and Guaynabo shops, respectively.
- 123. Comparing the sales from Aug. 16 to Aug. 18—when EO 63 was not in effect—with the sales from Aug. 23 to Aug.26, after it became effective, Tropical Chill's sales have dropped 23% in Dorado and 6% in Guaynabo. This drop in sales will only increase over the weekend, when its ice cream shops are normally the busiest.
- 124. In short, the Rolling EOs, and specifically EO No. 063, infringe Tropical Chill's right to earn a living and use its property as it sees fit, without sufficient government justification for restricting or infringing on those rights.
- 125. Plaintiff Alexandra Irizarry, a resident of Manati, Puerto Rico, works at a pharmacy in Manati, Puerto Rico. On April 23, 2021, she tested positive for COVID and thus has natural immunity.
- 126. Her employer requires the health certificate as a condition of employment, but she cannot receive it because she does not qualify for any of the proscribed exceptions. And because of the government's mandates, her employer will now require her to get vaccinated.
- 127. Although the COVID-19 Vaccination Record Card is not a "test," Regulation 138-A nonsensically added the COVID vaccine as part of the "tests" required to issue a health certificate, which, as relevant here, is legally required to work in pharmacies, as well as for many occupational licenses.

- 128. Accordingly, the government orders and actions here deprive Plaintiff Irizarry of her right to earn an honest living, and of her property interest in her health certificate, without sufficient justification for restricting or infringing on those rights.
- 129. Plaintiff Rene Matos has never been infected with COVID-19 and rarely visits medical practitioners or hospitals as he maintains in good health with a healthy diet.
- 130. He doesn't smoke, drink, or use legal or illegal drugs, and he is rarely sick. Mr. Matos's family has a record of longevity, and his great aunt was the late Ramona Trinidad Iglesias-Jordan, who on March 29, 2004, was recognized as the oldest person alive by the *Guinness Book of World Records*.
- 131. Mr. Matos, as is the case with most of his family (including all his children and grandchildren), refuses to get vaccinated because of conscientious objections stemming from previous adverse experiences when he vaccinated his daughters in the 1980s.
- His current job provides him a low wage of \$8.00/hr, and he works 40 hours per week. After deducting for Social Security, Medicare, and \$104 for child support that is automatically deducted from his paycheck, that translates to a weekly net income of \$194. His employer does not provide him with a health insurance plan. Starting on August 30, 2021, because of EO No. 64, Mr. Matos will now be required to pay for and provide weekly negative Covid tests to work at the supermarket or will be forced to quit his job.
- 133. As a result of inconsistent (arbitrary?) application of the applicable regulations, Mr. Matos was able to secure the health certificate that allows him to work in a grocery

store, but he fears that Regulation 138-A will be used to deprive him of that certificate or prevent him from renewing it.

- 134. Accordingly, the government orders and actions here deprive Plaintiff Matos of his right to earn an honest living, and threaten his property interest in his health certificate, without sufficient justification for restricting or infringing on those rights.
- 135. A similar conclusion follows as to Plaintiff Vega, Hillside Cabin's owner.
- 136. Hillside Cabin is a modern tropical and safe container (wagon) made into a mini house. It is situated on 1.5 acres of land, above one of the highest peaks of the mountainous city of Mayaguez, and it is completely private and isolated.
- 137. As part of her business, Ms. Vega never has physical contact with any of her guests—and the guests never have contact with guests not in their traveling party. Instead, the guests make their booking online and then unlock a key container with a password provided to them shortly before their stay commences. Staying in a private and isolated Airbnb like Hillside Cabin is not different, for COVID purposes, from staying at a friend's or family member's private house—except it's less risky, because there's no interaction with the friend or family member.
- 138. Ms. Vega objects to having to verify the vaccination status of guests she never meets in person.
- 139. Requiring her to ask guests to show proof of vaccination or a negative COVID-19 test as a precondition to staying in her Airbnb the night has no rational basis (and goes against her religious and moral beliefs, as will be described in the next claim).

140. Accordingly, the government orders and actions here deprive Plaintiff Vega of her right to earn an honest living, without sufficient justification for restricting or infringing on those rights.

Count No. II: Rights to Bodily Integrity, Medical Decision Making, and Privacy Under the Fourteenth Amendment (Plaintiffs Tropical Chill, Irizarry, Matos, and Vega)

141. The Rolling EOs further violate the liberty of Plaintiffs Irizarry, Matos, and Vega, as protected by the Fourteenth Amendment to the Constitution, in terms of their rights of personal autonomy, bodily integrity, and the right to reject medical treatment. "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992). *See also Maryland v. King*, 569 U.S. 435, 482 (2013) (Scalia, J., dissenting) ("But I doubt that the proud men who wrote the charter of our liberties would have been so eager to open their mouths for royal inspection.").

142. The Commonwealth's Rolling EOs compel Plaintiffs Tropical Chill and Vega to violate their clients' or customers' constitutional right to privacy.

143. The Rolling EOs also substantially burden the constitutional rights to privacy, personal autonomy, bodily integrity and medical choice of Plaintiffs Matos, Irizarry, and Vega, as they are being forced to be vaccinated or submit to invasive COVID testing any time they want to attend restaurants, bars, get a haircut, or stay in a hotel or Airbnb, among other activities.

144. For example, Mrs. Irizarry was denied entrance to a fast-food restaurant because she did not have proof of COVID vaccination.

145. Mrs. Irizarry is also being forced to request a reimbursement of tickets that she purchased to watch a show by "El Molusco" in Bellas Artes, because she is not vaccinated. Indeed, not even with a negative COVID test would she be able to attend the show.

146. According to an Instagram video by "El Molusco," the Puerto Rico Department of Health informed Bellas Artes that it could not allow performances with 100% theater capacity if it allowed non-vaccinated people to enter the theater with a negative COVID Test. Video available at https://www.instagram.com/tv/CTE9clBgl b/ (last seen Aug. 27, 2021) 147. But Section 5 of EO 063, which applies to theaters, clearly states, in pertinent part, that "All...theaters...that do[] not comply with Section 4 of this Executive Order shall be obligated to limit their capacity to 50% of the establishment's maximum capacity." And Section 4 of EO 063 titled, "Requirements for Visitors," clearly states that the pertinent venues, including theaters, may allow vaccinated and unvaccinated visitors, but that the theater or other relevant business

must verify that all of their visitors above the age of 12—subject to the exemptions indicated in this section—comply with <u>one</u> of the following conditions:

- 1. The visitor is properly vaccinated with a vaccine approved by the FDA to address the COVID-19 emergency.
- 2. The visitor presents a negative COVID-19 result from a qualified SARS-CoV2 viral test...performed 72 hours prior to visiting the establishment
- 3. The visitor presents a positive COVID-19 result from the 3 months, along with documentation of their recovery...

EO 063, §§ 4 & 5 (italics added, underlined in the original).

148. So the Health Department is interfering with the plaintiffs' rights even beyond what is allowed under the Rolling EOs.

149. To be sure, none of the plaintiffs is challenging any individual business's right to require proof of vaccination, masking, or any other covid-related measure. But their complaint, and the harm the plaintiffs suffer, results from the Rolling EOs and related government enforcement measures.

150. As mandated vaccinations are a significant burden on the plaintiffs' exercise of their constitutional rights, the government must justify its impositions with more particularity than simple references to a general interest in the need to maintain public health.

151. Even if there were a compelling interest in mandating vaccinations to the private sector, the Rolling EOs are not narrowly tailored to such an interest.

152. A blanket mandate, for example, ignores individual factors that increase or decrease the risks that the plaintiffs or their clients pose to themselves or others. For example, the western part of Puerto Rico is the current (hotspot of hospitalizations and deaths (which are still low, relatively speaking), while older age and, co-morbidities increase risks from COVID-19.

153. In like vein, having natural immunity from having had and recovering from COVID decreases those risks.

154. There is less justification for government coercion now than before vaccines were developed, with the pandemic having largely subsided-Delta variant notwithstanding and

the Commonwealth's hospitals facing no real threat of being overwhelmed by COVID-19 cases.

155. And the statistics and recent studies show that, given the effectiveness of the vaccines, the vaccinated are rarely affected by the unvaccinated, even with the advent of the Delta variant.

156. In the United States, the data from the 25 states that report breakthrough cases, hospitalizations, and deaths indicate that these occurrences are extremely rare among those who are fully vaccinated.

157. And as more people get vaccinated, the share of cases, hospitalizations, and deaths represented by unvaccinated people will tend to fall, because there will be fewer unvaccinated people in the population. That will be true even if infection, hospitalization, and death from COVID is still very rare among vaccinated people.

158. The logical conclusion is that the Rolling EOs is the government's attempt to protect the unvaccinated population, who choose to assume the risk of not getting vaccinated, from themselves.

159. Thus, requiring a negligible number of people to become vaccinated goes "beyond what [i]s reasonably required for the safety of the public," *Jacobson*, 197 U.S. at 28.

160. The same evidence that shows there is no compelling interest or narrow tailoring with Rolling EOs shows that it fails even under *Jacobson* which, contrary to popular myth, didn't uphold forcible vaccination but a \$5 (now \$140) penalty for not getting vaccinated. Indeed, as Justice Gorsuch noted concurring in *Roman Cath. Diocese of Brooklyn v. Cuomo*,

"Jacobson pre-dated the modern tiers of scrutiny," 141 S. Ct. 63, 70 (2020) (Gorsuch, J., concurring). See also id. at 71 (also noting that, unlike here, "[t]he imposition on Mr. Jacobson's claimed right to bodily integrity, thus, was avoidable and relatively modest").

161. Even if the government could show a compelling interest for the Rolling EOs, there are less onerous means to obtain the desired result which would lessen the burden on the plaintiffs' individual liberties and property interest.

Count No. III: RFRA (Plaintiff Vega as to EO No. 63)

- 162. The plaintiffs incorporate by reference all the foregoing paragraphs.
- 163. RFRA, which applies to actions by the Commonwealth as a covered entity of the United States, 42 U.S.C. § 2000bb-2(2), describes the "free exercise of religion as an unalienable right." §§ 2000bb(a)(1).
- 164. To protect this right, Congress provided that the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." §§ 2000bb–1(a)–(b).
- 165. A person whose religious practices are burdened in violation of RFRA "may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief." § 2000bb–1(c).
- 166. Here, for instance, Plaintiffs Vega's sincere religious beliefs compel her not to take the COVID vaccine.

- 167. Indeed, Plaintiff Vega objects to the COVID vaccine based on her interpretation of the Bible. Ms. Vega is a Christian of deep religious faith, who believes that her body is a temple that must be taken care of using natural means.
- 168. Ms. Vega also doesn't understand why she is being compelled to verify the vaccination status of guests she never meets in person. For Ms. Vega, requiring her guests to show proof of vaccination or a negative COVID test as a precondition to staying in her Airbnb has no rational basis and goes against her religious and moral beliefs.
- 169. EO 062 specifically burdens Plaintiff Vega's religious beliefs—by compelling her to become the government's vaccination or COVID test verifier—as it obligates her to participate in and condone forced vaccination, which go against her religious beliefs.
- 170. But EO 062's alternatives are neither the least restrictive nor the narrowly tailored ways in which to further the Commonwealth's interest.
- 171. Accordingly, EO 062 violates Plaintiff Vega's rights under RFRA.

Count No. IV: Pendent Claims: Separation of Powers; Non-Delegation Doctrine; Legality of Criminal Penalties under Rolling EOs

- 172. The plaintiffs incorporate by reference all the foregoing paragraphs.
- 173. The Puerto Rico constitutional structure emulates the federal design, including a government that is organized pursuant to the doctrine of separation of power with distinct legislative, judicial, and executive branches. P.R. Const., Art. I, § 2. As is the case in most state constitutions, in Puerto Rico, the power to enact laws for the protection of the life,

health, and general welfare of the people rests with the legislative branch. P.R. Const., Art. II, § 19.

174. The Puerto Rico Legislative Assembly has enacted specific laws for the protection of life and health against the threat of an epidemic or infectious disease, *none* of which include rulemaking delegation to the governor by way of executive order. *See* Proclamation of Epidemics Act, P.R. Laws Ann. tit. 24, § 354 and Act No. 81 of March 14, 1912, which delegates to the Secretary of Health the power to quarantine sick individuals during times of pandemic.

175. An executive order of general application constitutes a state act of a legislative nature which, without an appropriate legal basis, constitute a violation of the separation of powers.

176. Indeed, it is well-settled under Puerto Rico caselaw that the Governor does not possess the power to issue executive orders abridging fundamental rights or that contravene an act of the Legislature. *Hernandez, Romero* v. *Pol. de P.R.*, 177 DPR 121, 138. (2009); *Rodríguez Ramos* v. *ELA*, 190 DPR 448, 464 (2014).

177. All the Rolling EOs invoke their power from the same law: Puerto Rico Department of Public Safety Act, Act 20-2017, P.R. Laws Ann., tit. 25, § 3550, et seq.

178. Specifically, the Rolling EOs point to Article 5.10 of Act 20-2017, which provides in pertinent part:

In emergency or disaster situations, the Governor of Puerto Rico may declare through a proclamation that a state of emergency or disaster exists, as the case may be, in all of the territory of Puerto Rico or part thereof. The Governor, for the duration of such state of emergency or disaster shall have, in addition to any others conferred by other laws, the following powers:

- (a) May request the President of the United States of America any federal disaster assistance available under the federal legislation in effect, and accept such assistance and use it at his discretion and subject only to the conditions established by the federal legislation under which it was granted.
- (b) May prescribe, amend, and revoke any regulations as well as issue, amend, and rescind such orders as deemed convenient which shall be in effect for the duration of the state of emergency or disaster. Regulations prescribed or orders issued during a state of emergency or disaster shall have force of law for the duration of the state of emergency or disaster.
- (c) May render effective any state regulations, orders, plans, or measures for emergency or disaster situations or modify them at his discretion. . . .

P.R. Laws Ann. tit. 25, § 3650.

179. All the Rolling EOs invoke their power from the same law: Puerto Rico Department of Public Safety Act, Act 20-2017, P.R. Laws Ann., tit. 25, § 3550, et seq.

180. It is of critical importance to consider that the purpose of Act 20-2017 was to reform Puerto Rico's public security system and consolidate under the new Department of Public Safety all resources to combat criminality and violence in Puerto Rico, as well as emergency response to disaster situations.

181. And zeroing-in on Article 5.10 of Act 20-2017 reveals that it forms part of the provisions concerning the management of natural disasters in Puerto Rico—such as hurricanes and earthquakes—for which the Emergency Management and Disaster Administration Bureau is responsible. P.R. Laws Ann. tit. 25, §§ 3641-3655

182. It bears highlighting that the Puerto Rico Department of Public Health was not even considered as being part of the agencies consolidated under Act 20-2017 to serve as a key element to Puerto Rico's emergency response system.

183. Thus, Article 5.10, cannot be construed to authorize the governor to declare an emergency of a completely different nature, such as learning how to grapple with COVID.

184. As most governors, the Governor of Puerto Rico has ample powers, but he is not

legally authorized to issue any executive order he wants.

185. To say that the governor may issue any executive order he deems "convenient" with whatever content or impact upon fundamental rights he decides, based on the existence of a health situation and in disregard of the statutory framework specifically granting those kinds of powers to the Health Secretary, cannot be a sound construction of Article 5.10.

186. In fact, under his own statutory authority (Act 81) the Health Secretary can adopt rules and regulations to address health safety matters and has done so in relation to the COVID situation. *See* Regulation 9210 of the Puerto Rico Health. Department, August 21, 2020 (requiring mandatory use of masks and establishing administrative fines for non-compliance).

187. To adopt this kind of regulation, the Health Department must comply with the rulemaking process established by the Puerto Rico Uniform Administrative Procedure Act (LPAU), Act. 38-2017, P.R. Laws Ann., tit. 3, §§ 9601-9713, which provides for citizen

participation through a written comments period and in the case of the Health Department, even a public hearing.

188. As a principle of separation of power, the Governor cannot exercise rulemaking power specifically delegated by the Legislature to an administrative agency. The Puerto Rico Supreme Court has recognized that an executive order of such fashion undermines the public policy of public participation that encompasses the LPAU. *Rodríguez Ramos v. ELA*, 190 P.R. Dec. 448, 464 (2014). That is the case of the Rolling EOs.

189. Moreover, in case of urgent need to act in cases such as the COVID situation, the LPAU specifically provides for an emergency rulemaking procedure which allows the governor himself to grant immediate effectiveness to a regulation adopted by an administrative agency, subject to subsequent completion of the regular rulemaking process. P.R. Laws Ann. tit. 3, § 9623.

190. The Rolling EO's adoption unlawfully sidelined this statutory framework and constitute an attempt to circumvent compliance with LPAU under color of an emergency, which has its own emergency rulemaking provisions.

191. By directly infringing on the conduct of private citizens, in violation of their fundamental individual and economic liberties, the rolling EOs' extraordinary measures unconstitutionally encroach upon the legislative powers.

192. In sum, the Rolling EOs are null and void in so far as the governor does not possess statutory authority for having issued them.

- 193. In the alternative, if this Court finds that Article 5.10 grants authority to the governor to issue these types of Rolling EOs, it should nonetheless hold that it constitutes an unconstitutional delegation of power.
- 194. The non-delegation doctrine equally applies to separation-of-powers controversies under Puerto Rico law. *Dominguez Castro v. ELA*, 178 P.R. Dec. 1, 92-94 (2010).
- 195. A delegation of legislative powers is valid if it provides intelligible principles and sufficient procedural and substantive guidelines that limit the use of the delegated power.

 196. But by limiting Article 5.10 to a simple notion of authorizing any order the governor deems "convenient," the Puerto Rico Legislature failed to provide the safeguards mandated by the Puerto Rico Constitution: Article 5.10 lacks parameters or "intelligible principles" to guide his executive actions.
- 197. Inasmuch as any responsible public officer will act upon a matter with a purpose and not merely based on an arbitrary desire, that officer will always act as he or she deems convenient and necessary. Taking that as a commonsense interpretation of what "deemed convenient" means, it cannot be considered itself as the statutory parameter that is needed to validate a constitutional delegation of power.
- 198. In any case, no intelligible principle or guidelines can be inferred from Act 20-2017's legislative history or Statement of Motives that could limit the Governor's sole discretion.

 199. Thus, Article 5.10 of Act 20-2017's delegation of power is excessively vague and overbroad and should be declared unconstitutional.

- 200. To make matters worse, each Rolling EOs include a direct threat of criminal sanctions for failing to comply with its provisions. *See* Paragraph 73, above.
- 201. This threat of criminal penalties lacks a legal basis and should be declared null and void by the Court.
- 202. Neither Art. 5.14 of Act 20-2017 nor Art. 33 of the Health Department Act (Act 81) provides for such penalty.
- 203. Act. 5.14 details certain specific conducts that are punishable, but noncompliance with an EO is not included among those.
- 204. And although Art. 33 of the Health Department Act contemplates criminal punishment by failing to comply with Health Department regulations, it provides no such power against noncompliance with executive orders, like the Rolling EOs.
- 205. In sum, the unlawful threat of criminal prosecution contained in the Rolling EOs are null and void and should be so declared by this Court.

Prayer for Relief

WHEREFORE, the plaintiffs request a judgment where this Court:

- a. Declares the Rolling EOs unconstitutional on their face, or, alternatively, declares the Rolling EOs unconstitutional as applied to each plaintiff;
- b. Declares that the Rolling EOs violate RFRA as applied to Plaintiff Vega;
- c. Declare Regulation 138-A unconstitutional on its face, or as applied to Plaintiff
 Irizarry;
- a. Enjoins the defendants from enforcing the Rolling EOs and Regulation 138-A;

- d. Grants the plaintiffs their costs and attorney's fees under 42 U.S.C. § 1988, and any other applicable authority; and
- e. Grants any and all other such relief as this Court deems just and equitable.

Jury Demand

The plaintiffs demand a trial by jury of any triable issues in this case.

Dated: August 27, 2021 Respectfully submitted,

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DEPARTMENT OF

Health

Government of Puerto Rico
Health Department

Regulation of the Secretary of Health No. 138-A to amend the Regulation of the Secretary of Health No. 138 for the Issuance of Health Certificates in Puerto Rico

Number: 9295

Date: August 5th of 2021

Approved: Omar J. Marrero Díaz

Secretario de Estado

Government of Puerto Rico Health Department

Regulation of the Secretary of Health No. 138-A

Amendment to the Regulation of the Secretary of Health No. 138, Regulation for the issuance of health certificates in Puerto Rico, Regulation No. 7784 of December 9, 2009, as registered in the Department of State.

Article 1: Legal Basis

Regulation of the Secretary of Health No. 138, Regulation for the issuance of health certificates in Puerto Rico, Regulation No. 7784 of December 9, 2009, as registered in the Department of State (Regulation No. 138), and is promulgated by virtue of Act No. 81 of March 14, 1912, as amended, better known as the "Organic Law of the Department of Health," Act No. 38 of June 30, 2017, as amended, better known as "Uniform Administrative Procedure Act of the Government of Puerto Rico" and Act No. 232 of August 30, 2000, known as the "Puerto Rico Health Certification Act."

Article 2: Purpose

These amendments are adopted with the purpose of expressly establishing the requirement to present the vaccination card against COVID-19 or the "COVID-19 Vaccination Record Card" as an essential document for a doctor to issue a health certificate.

As indicated below, Article IV is amended to add subsections (s) and (t) of Regulation No. 138. Also, subsection (1) of Article X and subsection 4 (A) is added to Article X of Regulation No. 138.

Article IV is amended. Definitions, to add the following subsection:

- s. CDC: Disease Control and Prevention of the United States Department of Health.
- t. "COVID-19 Vaccination Record Card": official vaccination card against COVID-19 issued by the CDC, which identifies individuals who have been completely inoculated with the aforementioned virus. It is the proof or supporting evidence that an individual is vaccinated or inoculated.

Article X is amended. Tests required to issue a health certificate to read:

1. No doctor may issue health certificates without the following: (1) a medical evaluation, (2) having certified that the person has shown evidence of vaccination against COVID-19 (COVID-19 Vaccination Record Card) with the series of complete vaccine, issued by the CDC, (3) the results of the in vitro tuberculin or tuberculosis test and (4) the serological test for syphilis, with their respective confirmatory tests when applicable.

As an exception, a doctor may issue the health certificate without the person being inoculated with the COVID-19 vaccine in those cases where the patient has a compromised immune system or there is a medical contraindication that prevents inoculation. This must be certified by a doctor authorized to practice in Puerto Rico or by the doctor who issues the Health Certificate. In addition, the doctor must certify the duration of the medical contraindication and whether it is temporary or permanent. If it were temporary, once the contraindication ceases, the person must comply with the vaccination requirement, for subsequent Certificates.

On the other hand, it is allowed - by way of exception - that the Health Certificate be issued to people not inoculated for religious reasons, as long as the vaccine goes against the dogmas of the patient's religion. The doctor must certify that he was shown the sworn statement required by the Department of Health for these cases, in accordance with the Executive Orders in force.

4 (A) The doctor will require the original vaccination card, as well as a legible copy of it in order to prove its validity. For high-risk patients, the licensed physician may require a negative COVID-19 result from a qualified SARSCoV2 viral test (nucleic acid amplification tests (NAAT) or antigen tests).

Article 3: Validity

This Regulation shall take effect immediately, by virtue of Section 2.13 of Act No. 38-2017, as amended, known as the "Uniform Administrative Procedure Act of the Government of Puerto Rico" (3 LPRA S 9623).

In San Juan, Puerto Rico, today August 5, 2021.

Dr. Carlos R. Mellado Lépez Secrettasio de Salud

GOBIERNO DE PUERTO RICO LA FORTALEZA SAN JUAN, PUERTO RICO

Boletín Administrativo Núm. OE-2021-062

ORDEN EJECUTIVA DEL GOBERNADOR DE PUERTO RICO, HON. PEDRO R. PIERLUISI, PARA REQUERIR LA VACUNA CONTRA EL COVID-19 A LOS CONTRATISTAS DE LA RAMA EJECUTIVA, ASÍ COMO EN LOS SECTORES DE LA SALUD Y LAS HOSPEDERÍAS

POR CUANTO:

Desde el 12 de marzo de 2020 —tras registrarse los primeros casos de COVID-19 en nuestra Isla— estamos en un estado de emergencia para atender la pandemia que sufrimos actualmente. A partir de esa fecha se han realizado un sinnúmero de estrategias para controlarla. La última fue la promulgación del Boletín Administrativo Núm. OE-2021-058, en el que se le requirió a todos los empleados públicos de la Rama Ejecutiva el presentar el certificado de inmunización contra el referido virus, sujeto a ciertas excepciones y opciones disponibles.

POR CUANTO:

Al presente, el alza en los contagios continúa en ascenso. Los datos ofrecidos por el Departamento de Salud de Puerto Rico indican que el promedio diario aumentó a 288 casos positivos. En relación con los casos de pacientes hospitalizados, las estadísticas comprueban un aumento en los pasados días para un total de 235 personas hospitalizadas. No conforme con ello, la tasa de positividad, es decir, el porcentaje de personas que resultan positivas al virus de todas aquellas que se hacen la prueba, acrecentó a 11.04% según los datos del Departamento de Salud.

Por otro lado, datos publicados el 3 de agosto de 2021 por la referida agencia gubernamental exponen que durante la semana del 19 al 25 de julio ocurrieron 191 brotes del COVID-19 en un total de 47 municipios, lo que representa un 65.3% de las personas contagiadas para ese periodo.

En Estados Unidos los datos son iguales o más preocupantes que en Puerto Rico. El promedio de casos positivos durante una semana ronda en los sobre 90,000 casos, número que no se veía desde noviembre de 2020, fecha anterior a la vacunación contra el COVID-19. A nivel mundial, el promedio está sobre los 570,000 casos. Este aumento, en parte, se debe al surgimiento de la variante *Delta*. Ciertamente dicho aumento es preocupante y requiere que el Gobierno tome nuevas acciones afirmativas para controlar los



contagios y evitar que se afecten el gobierno y los servicios de salud, a la misma vez que se protege la vida de todos los ciudadanos. Por ende, el Gobierno tiene la responsabilidad y el interés apremiante e importante de en prevención a cualquier evento mayor, fortalecer áreas de sensibilidad como lo son las facilidades de salud que atiendan pacientes de forma directa y las hospederías que reciben a los turistas.

POR CUANTO:

El aumento en la tasa de positividad, en los contagios y en las hospitalizaciones en Puerto Rico como en Estados Unidos tiene un factor común que no podemos pasar por alto: las personas no vacunadas contra el COVID-19. Según los datos del Departamento de Salud y las entidades oficiales en Estados Unidos, la gran mayoría de las personas contagiadas y las hospitalizadas son las no inoculadas. Esto ha provocado un aumento en la transmisión comunitaria.

POR CUANTO:

La prueba científica demuestra que la medida más efectiva para controlar el COVID-19 es la vacunación. Como bien se explicó exhaustivamente en el Boletín Administrativo Núm. OE-2021-058, la Organización Mundial de la Salud ("OMS") ha dispuesto que las vacunas disponibles son seguras y eficaces, y que impiden que las personas se enfermen gravemente o fallezcan por causa del SARS-CoV2. Por tanto, la OMS insta a vacunarse, incluso si la persona ya se contagió con el COVID-19.

De igual forma, la Administración de Alimentos y Medicamentos de Estados Unidos ("FDA", por sus siglas en inglés) ha indicado que las tres (3) vacunas contra el COVID-19 que autorizó para uso de emergencia sí funcionan, pues previenen dicha enfermedad y los graves efectos en la salud, incluyendo la hospitalización y la muerte. A su vez, expresó que la información disponible sugiere que las vacunas autorizadas protegen contra las cepas o variantes que están actualmente en circulación. Por ende, la FDA —agencia encargada de evaluar y autorizar las vacunas— ha promovido la vacunación como un mecanismo efectivo para reducir la propagación del COVID-19.

Por último, los Centros para el Control y la Prevención de Enfermedades ("CDC", por sus siglas en inglés) han expuesto que las vacunas contra el COVID-19 son seguras y efectivas, especialmente para prevenir los casos graves y la muerte. Aseveraron que ésta puede evitar que las personas contraigan y propaguen el virus, que las personas se enfermen gravemente,



aunque contraigan el COVID-19, y ayuda a proteger a sus familiares y a las personas a su alrededor. A su vez, aclararon que las vacunas no son experimentales, pues ya pasaron por las etapas requeridas en los ensayos clínicos. Por tanto, sostienen que la opción más segura para combatir dicha pandemia es inocularse contra el COVID-19.

POR CUANTO:

En Puerto Rico, la vacunación está en plena implementación. Al día de hoy —según los datos del CDC— más del 77.4% de las personas aptas para recibir la vacuna tienen al menos una dosis. Por su parte, aproximadamente el 67.4% de las personas aptas tienen la vacuna completada. Estos datos y las pocas reacciones adversas registradas confirman que las vacunas contra el COVID-19 son seguras y eficaces.

POR CUANTO:

Es importante resaltar que al día de hoy 1,920,091 personas en Puerto Rico tienen la serie completa de vacuna. Esto significa que el 60.1% de la población total de nuestra Isla está debidamente inoculada y que aún falta un porciento significativo de personas a ser vacunadas. Además, el conteo acumulado de dosis administradas demuestra que la vacunación ha disminuido en estos días, es decir, diariamente ya no se inoculan tantas personas. Tal hecho ha atrasado la meta de lograr la llamada "inmunidad de rebaño", o sea, el momento en el cual el virus no puede propagarse pues la población está protegida. Adviértase que hasta tanto no se logre lo anterior, Puerto Rico está en peligro de sufrir las consecuencias más severas del COVID-19.

POR CUANTO:

Lo que sucede en Puerto Rico en cuanto a la vacunación es consistente con lo que sucede en otras jurisdicciones. A nivel mundial, solo se ha logrado vacunar completamente un poco más del 15% de toda la población y con una sola dosis el 29.3%. En los Estados Unidos de América solo se ha inoculado completamente más del 49.8% y con una dosis el 58% de toda la población. Estos números confirman la necesidad de implementar en Puerto Rico medidas que garanticen la seguridad de los turistas y las personas que trabajan en ese sector.

POR CUANTO:

En relación con la vacunación en general, como se expresó en el Boletín Administrativo Núm. OE-2021-058, el Tribunal Supremo de Estados Unidos ha examinado la potestad del Estado en regular su utilización. En *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), se impugnó la inoculación obligatoria de la vacuna contra la viruela. Al atender el caso, el Tribunal determinó que la libertad garantizada por



la Constitución de Estados Unidos no es un derecho absoluto y está sujeta a restricciones razonables que el gobierno entienda necesarias para promover la seguridad, la salud, la paz, el buen orden y la moral de la comunidad.

No conforme con ello, en *Zucht v. King*, 260 U.S. 174 (1922), el Tribunal Supremo de Estados Unidos validó una ley del estado de Texas que prohibía la admisión de menores no vacunados en las escuelas del estado. En su razonamiento concluyó que lo ordenado no establecía un poder arbitrario, sino una amplia discreción requerida para atender y proteger la salud pública.

Por consiguiente, en ambos casos, el Tribunal Supremo de Estados Unidos validó la autoridad estatal para obligar de forma razonable la vacunación.

POR CUANTO:

En el caso de Puerto Rico, en *Lozada Tirado v. Testigos de Jehová*, 177 DPR 893 (2010), nuestro Tribunal Supremo reconoció que, aunque las personas tienen un derecho de rechazar un tratamiento médico, este no es absoluto. Utilizando como fundamento jurisprudencia federal (*Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)), el Tribunal concluyó que puede haber ciertos intereses del Estado que deben tomarse en cuenta, tales como la protección de terceros. Este último aplica cuando se pretende someter a los ciudadanos a cierto tratamiento médico durante una crisis de salud pública. Así reconoció que el Estado puede requerir de manera obligatoria ciertas vacunas ante la amenaza de una epidemia. *Id.*, n. 13.

POR CUANTO:

Ciertamente, las personas tienen un derecho constitucional a rechazar un tratamiento médico. No obstante, a diferencia de los tratamientos individuales que no afectan la salud de las otras personas, las vacunas van dirigidas a combatir un enemigo colectivo, no uno individual. Es por ello que la vacunación se ha considerado como uno de los grandes logros en la salud pública en el siglo XX. Véase Bruesewitz v. Wyeth LLC, 562 U.S. 223, 226 (2011).

POR CUANTO:

En el caso de las vacunas contra el COVID-19, a pesar de que no existe jurisprudencia vinculante, tan reciente como el 2 de agosto de 2021, el Tribunal de Apelaciones de Estados Unidos para el Séptimo Circuito confirmó la determinación del Tribunal de Distrito federal de Indiana. En ese caso se le requirió a los estudiantes y a los trabajadores estar completamente inoculados para asistir presencialmente a la universidad. Al atender el caso, el Tribunal de



Apelaciones resolvió que conforme con el caso de *Jacobson v. Massachusetts, supra*, no había problema constitucional con requerir la referida vacuna. Fundamentó su decisión en que, a diferencia de *Jacobson*, en Indiana se fue más lazo y se permitieron unas excepciones y la vacuna no era obligatoria para todos los ciudadanos, sino una condición para asistir a la universidad. *Véanse, Klaasen v. Trustees of Indiana University*, 2021 WL 3281209; *Klaasen et al v. The Trustees of Indiana University*, 2021 WL 3025893.

Por otro lado, en *Bridges v. Houston Methodist Hospital*, 2021 WL 2399994, se requirió a los empleados de un hospital en Texas estar debidamente inoculados contra el COVID-19. El Tribunal de Distrito federal validó las acciones del hospital y el requerimiento de la vacunación. Entendió que condicionar el empleo a una vacuna no es una forma de coacción y que puede ser parte de las condiciones de empleo.

POR CUANTO:

Consistente con lo anterior, el 6 de julio de 2021, el Departamento de Justicia de Estados Unidos, por voz de su Oficina de Asesoría Legal ("OLC", por sus siglas en inglés), emitió una Opinión en la que concluyó que las disposiciones federales que autorizaron el uso de emergencia de las vacunas contra el COVID-19 no prohíben a las entidades públicas y privadas el imponer como un requisito el estar vacunado contra el SARS-CoV2. Es decir, a su entender, la Sección 564 de la *Food, Drug, and Cosmetic Act* ("FDCA"), 21 USC sec. 360bbb-3, solo requiere que quien vaya a administrar la vacuna a una persona, le informe del tipo de autorización dada, de los potenciales beneficios y riesgos, y de la opción de aceptar o rechazar la vacuna, incluyendo el informar las consecuencias de rechazarla.

POR CUANTO:

No conforme con lo anterior, el 29 de julio de 2021, el Presidente de Estados Unidos, Joseph R. Biden Jr., requirió a todos los empleados federales y contratistas a que se vacunaran o se hicieran semanalmente la prueba para detectar el COVID-19. Esto luego que el Departamento de Asuntos de Veteranos de Estados Unidos fuera la primera agencia federal en implantar el requerimiento de que todo trabajador de salud estuviera estar vacunado.

Asimismo, varios estados y ciudades anunciaron que requerirán la vacuna a sus empleados. La ciudad de Nueva York fue la primera en anunciarlo. El Alcalde Bill de Blasio ordenó que, a partir del 13 de septiembre de 2021, todos los empleados municipales deberán



estar vacunados o, en la alternativa, deberán hacerse una prueba de COVID-19 semanalmente. Asimismo, requirió la vacunación a las personas que acudan a negocios en formato cerrado, tales como restaurantes, teatros y gimnasios. En dicho estado, el Gobernador Andrew Cuomo ordenó que los empleados en hospitales se vacunaran antes del 6 de septiembre de 2021. Además, ordenó a los empleados de transportación a vacunarse o presentar un resultado negativo de COVID-19 de forma semanal.

Por su parte, en el estado de California, a partir de este mes, se requerirá la vacuna a todos sus empleados públicos o, en la alternativa, una prueba negativa de COVID-19. Igualmente, el gobernador de New Jersey, Phil Murphy, ordenó la vacunación obligatoria para empleados de cuidado médico, centros de cuidos prolongado, en las cárceles, entre otros, o en la alternativa, hacerse una prueba semanal para detectar el COVID-19.

POR CUANTO:

El Artículo 5.10 de la Ley Núm. 20-2017, según enmendada, conocida como la "Ley del Departamento de Seguridad Pública de Puerto Rico", me faculta como Gobernador a, luego de decretar un estado de emergencia o desastre, darle vigencia a aquellas medidas que resulten necesarias durante el periodo que se extienda la emergencia para el manejo de ésta con el fin de proteger la seguridad, salud y propiedad de todos los residentes de Puerto Rico.

POR CUANTO:

El inciso (b) del Artículo 5.10 de la Ley Núm. 20-2017, establece que como Gobernador de Puerto Rico puedo dictar, enmendar y revocar aquellos reglamentos y emitir, enmendar y rescindir aquellas órdenes que estime convenientes para regir durante el estado de emergencia o desastre. Los reglamentos dictados u órdenes emitidas durante un estado de emergencia tendrán fuerza de ley mientras dure dicho estado de emergencia.

POR CUANTO:

El Gobierno de Puerto Rico tiene la responsabilidad de realizar los esfuerzos necesarios para prevenir y detener la propagación del COVID-19 y para salvaguardar la salud, la vida y la seguridad de todos los residentes de Puerto Rico.

POR CUANTO:

El poder de dirigir un pueblo conlleva la gran responsabilidad de asegurar que su población esté saludable y segura. A su vez, el poder de razón de Estado —según delegado en el Poder Ejecutivo por la Ley Núm. 20-2017— faculta al gobierno a tomar las medidas necesarias par proteger la salud y seguridad de su población. Es decir, es el poder inherente del Estado el que permite crear y promover regulación en general con el fin de proteger la salud, la



seguridad y el bienestar general. Para lograr estos beneficios en pro de la comunidad, el Estado tiene el poder de restringir ciertos intereses personales, los cuales no son absolutos.

POR CUANTO:

Con el objetivo específico de proteger la salud del pueblo de Puerto Rico es meritorio tomar acciones claras y contundentes para asegurar que cada ciudadano esté saludable, mientras que a su vez se garantiza que los servicios gubernamentales y de salud no se vean afectados. Este Gobierno tiene como interés apremiante e importante salvaguardar la vida de toda la población en general y de los trabajadores en servicios esenciales como lo son los gubernamentales, los de salud y los de las hospederías. Asimismo, un paso necesario para cumplir con esos objetivos es el implementar acciones afirmativas —como la vacunación— para asegurar que las personas que provean servicios gubernamentales, de salud o de hospedería estén inoculadas, lo que evitará contagios en esas facilidades esenciales. Esto definitivamente ayudará a que Puerto Rico se convierta en un destino seguro para todos nuestros visitantes y residentes.

POR CUANTO:

La pandemia del COVID-19 representa un escenario dinámico y cambiante, el cual exige que el Gobierno rediseñe las estrategias para manejar los contagios en la población oportunamente.

POR CUANTO:

Ante el aumento significativo en los contagios, como Gobernador tengo la responsabilidad y el deber de continuar monitoreando detenidamente las estadísticas diarias emitidas por el Departamento de Salud y, consecuentemente, tomar las medidas necesarias para garantizar la salud de todos. De no disminuir los contagios, me veré forzado a implementar restricciones significativas, incluyendo el ordenar reducir el horario de servicio en las operaciones del sector privado y la capacidad en los lugares públicos y privados.

POR CUANTO:

Debe recalcarse que cada ciudadano tiene la responsabilidad individual de ser juicioso y crítico ante cualquier actividad personal, comercial o profesional a la que asista o esté involucrado. Si cada puertorriqueño sigue al pie de la letra todas las medidas cautelares ordenadas por los *Centers for Disease, Control and Prevention* ("CDC", por sus siglas en inglés) y por la Orden Administrativa Núm. 2021-508 emitida por el Secretario del Departamento de Salud, es indudable que todos nos protegeremos. Así pues, cada uno de los ciudadanos tiene la responsabilidad de continuar tomando las medidas cautelares impuestas por el Secretario y, además, ser



juicioso y determinar no participar en cualquier actividad que entienda pueda poner en riesgo su salud o la de los demás.

POR TANTO:

Yo, PEDRO R. PIERLUISI, Gobernador de Puerto Rico, en virtud de los poderes inherentes a mi cargo y la autoridad que me ha sido conferida por la Constitución y las leyes del Gobierno de Puerto Rico, por la presente, decreto y ordeno lo siguiente:

SECCIÓN 1a:

REQUERIMIENTO DE VACUNACIÓN A LOS CONTRATISTAS DE LA RAMA EJECUTIVA. En aras de lograr salvaguardar la salud de toda la población en Puerto Rico y evitar contagios en las facilidades del Gobierno, mientras se garantiza la continuación de los servicios gubernamentales, ordeno que a partir de la vigencia de esta Orden Ejecutiva todas las agencias públicas de la Rama Ejecutiva requieran a todos sus contratistas y a los empleados de éstos que trabajen de forma presencial o frecuenten las oficinas —con excepción de lo indicado en la Sección 5ª de esta Orden Ejecutiva a estar debidamente inoculados con una vacuna autorizada por la FDA para atender la emergencia del COVID-19. Para efectos de ese requisito será suficiente que el contratista o sus empleados demuestren que para la fecha de vigencia de esta Orden Ejecutiva comenzaron el proceso de vacunación con la primera dosis. No obstante, deberán cumplir y acreditar posteriormente a la agencia gubernamental contratante la administración de la segunda dosis, si el tipo de vacuna que se administraron así lo requiere. Para esto tendrán hasta el 30 de septiembre de 2021.

Será responsabilidad de cada autoridad nominadora, o de la persona en quien ésta delegue, solicitar al contratista y a los empleados de éste el certificado de inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha completado o iniciado su proceso de vacunación contra el COVID-19. Por su parte, será responsabilidad del contratista y de sus empleados presentar su certificado de inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha iniciado o completado su proceso de vacunación contra el COVID-19 para poder ser aceptado físicamente en las facilidades gubernamentales. Se permite sustituir el certificado de inmunización por cualquier otro método físico o digital autorizado que acredite la vacunación.

SECCIÓN 2a:

REQUERIMIENTO DE VACUNACIÓN A LOS EMPLEADOS EN FACILIDADES DEL SECTOR DE LA SALUD. En aras de fortalecer y lograr salvaguardar la salud de toda la población en Puerto Rico y



evitar complicaciones y hasta un colapso en el sistema de salud, ordeno que a partir de la vigencia de esta Orden Ejecutiva todos los empleados de las facilidades del sector de la salud detalladas en esta Sección —con excepción de lo indicado en la Sección 5ª de esta Orden Ejecutiva— deberán estar debidamente inoculados con una vacuna autorizada por la FDA para atender la emergencia del COVID-19. Para efectos de ese requisito será suficiente que el empleado demuestre que para la fecha de efectividad de esta Orden Ejecutiva comenzó el proceso de vacunación con la primera dosis. No obstante, posteriormente deberá cumplir y acreditar a su patrono la administración de la segunda dosis, si el tipo de vacuna que se administró así lo requiere. Para esto tendrá hasta el 30 de septiembre de 2021.

Será responsabilidad de cada patrono solicitar al empleado el certificado de inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha completado o iniciado su proceso de vacunación contra el COVID-19. Por su parte, será responsabilidad del empleado someter su certificado de inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha iniciado o completado su proceso de vacunación contra el COVID-19 para poder ser aceptado físicamente en las facilidades de salud. Se permite sustituir el certificado de inmunización por cualquier otro método físico o digital autorizado que acredite la vacunación.

Para propósitos de esta Orden Ejecutiva, facilidades del sector de la salud se refiere a lugares en los que se le ofrece servicio de salud directos a la población. En particular, se incluyen, pero no se limitan, a hospitales, laboratorios clínicos, salas de emergencias, clínicas de servicios médicos, centros de salud, oficinas de médicos primarios y especialistas, centros de terapia, bancos de sangre, farmacias, todos los centros de cuido de adultos mayores, dispensarios de cannabis medicinal, entre otros.

SECCIÓN 3a:

REQUERIMIENTO DE VACUNACIÓN A LOS EMPLEADOS DE HOTELES, PARADORES Y HOSPEDERÍAS. Con el propósito de fortalecer la salud en el sector del turismo y, en particular, garantizar la continuidad de los servicios de hospederías, ordeno que a partir de la vigencia de esta Orden Ejecutiva todos los empleados de hoteles, paradores y hospederías —con excepción de lo indicado en la Sección 5ª en esta Orden Ejecutiva— deberán estar debidamente inoculados con una vacuna autorizada por la FDA para atender la emergencia del COVID-19. Para efectos de ese requisito será



suficiente que éstos demuestren que para la fecha de efectividad de esta Orden Ejecutiva comenzaron el proceso de vacunación con la primera dosis. No obstante, posteriormente los empleados deberán cumplir y acreditar a su patrono la administración de la segunda dosis, si el tipo de vacuna que se administraron así lo requiere. Para esto tendrán hasta el 30 de septiembre de 2021.

Será responsabilidad de la gerencia de los hoteles, paradores y hospederías solicitar al empleado el certificado de inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha completado o iniciado su proceso de vacunación contra el COVID-19. Por su parte, será responsabilidad del empleado presentar su certificado de inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha iniciado o completado su proceso de vacunación contra el COVID-19 para poder ser aceptado físicamente en las facilidades del hotel, parador u hospedería. Se permite sustituir el certificado de inmunización por cualquier otro método físico o digital autorizado que acredite la vacunación.

Se recomienda a todos los concesionarios, comercios y casinos que operen dentro o en las inmediaciones de los hoteles, paradores y hospederías a que apliquen los mismos requerimientos detallados en esta Orden Ejecutiva.

SECCIÓN 4a:

REQUERIMIENTO DE VACUNACIÓN A LOS HUÉSPEDES DE HOTELES, PARADORES, HOSPEDERÍAS Y ALQUILERES DE CORTO PLAZO. Igualmente, con el propósito de fortalecer la salud en el sector del turismo y en la población de Puerto Rico, ordeno que a partir de la vigencia de esta Orden Ejecutiva todos los huéspedes de hoteles, paradores y hospederías, incluyendo los alquileres a corto plazo ("Short Term Rentals" comercializadas independientemente o a través de plataformas como lo son Airbnb, VRBO, Join a Join, entre otras) —con excepción de lo indicado en la Sección 5ª en esta Orden Ejecutiva— deberán para la fecha de efectividad de esta Orden Ejecutiva estar debidamente inoculados con una vacuna autorizada por la FDA para atender la emergencia del COVID-19. De no cumplir con lo anterior, deberán proceder conforme con lo establecido en la Sección 6ª, en la cual se requiere la presentación de un resultado negativo de COVID-19.

Será responsabilidad de la gerencia de los hoteles, paradores y hospederías, incluyendo los administradores u operadores de los alquileres a corto plazo, solicitar al huésped el certificado de



inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha completado su proceso de vacunación contra el COVID-19. Por su parte, será responsabilidad del huésped presentar su certificado de inmunización ("COVID-19 Vaccination Record Card") o documento donde se acredite que ha completado su proceso de vacunación contra el COVID-19 para poder ser aceptado físicamente en las facilidades del hotel, parador u hospedería. Se permite sustituir el certificado de inmunización por cualquier otro método físico o digital autorizado que acredite la vacunación.

SECCIÓN 5a:

EXCEPCIONES. Para propósitos de esta Orden, estarán exentos de estar inoculados con la vacuna contra el COVID-19 las personas cuyo sistema inmune esté comprometido y ésta pueda ser perjudicial para su salud. Asimismo, estarán exceptuadas las personas que tengan alguna otra contraindicación médica que impida su inoculación. Esto deberá ser certificado por un médico autorizado a ejercer su práctica en Puerto Rico. Además, el médico deberá certificar la duración de la contraindicación médica y si ésta es temporera o permanente. Si fuera temporera, una vez la contraindicación cese, la persona deberá cumplir con el requisito de vacunación, según sea aplicable en esta Orden.

Por otro lado, se permite —a manera de excepción— el no inocularse por motivos religiosos siempre y cuando la vacuna vaya en contra de los dogmas de la religión del contratista, empleado o huésped. Para cumplir con esta excepción, la persona deberá presentar una declaración jurada en la que certifique junto al ministro o líder eclesiástico de su religión o secta, ambos declarando bajo juramento y sujeto a perjurio, que por causa de sus creencias religiosas no podrá ser inoculado contra el COVID-19. Si no tiene un ministro o líder eclesiástico deberá presentar una declaración jurada en la que fundamente de forma específica sus sinceras convicciones religiosas. De no cumplirse con el criterio anterior, dicha solicitud se deberá procesar conforme con lo indicado en la Sección 6ª de esta Orden Ejecutiva.

Las personas que no puedan ser vacunadas por alguna de las excepciones antes mencionadas podrán acudir de forma presencial a las facilidades correspondientes, utilizando las medidas de seguridad adecuadas, lo que incluye el uso de mascarilla, distanciamiento social y cualquier otra que de tiempo en tiempo disponga el Secretario del Departamento de Salud.



Además de lo anterior, estas personas deberán —mientras dure la emergencia declarada en el Boletín Administrativo Núm. OE-2020-020— cumplir con lo siguiente:

- 1. En el caso de contratistas de la Rama Ejecutiva, si la persona acude diariamente а las oficinas gubernamentales, semanalmente deberá presentar un resultado negativo de COVID-19 proveniente de una prueba viral cualificada SARS-CoV2 (pruebas de amplificación del ácido nucleico ("NAAT") o pruebas de antígeno) realizada dentro de un término máximo de setenta y dos (72) horas antes, o un resultado positivo a COVID-19 de los pasados tres (3) meses, junto con documentación de su recuperación, incluyendo una carta de un proveedor de salud certificado o de algún oficial gubernamental de salud que certifique que la persona está recuperada y lista para comparecer a lugares públicos. Si el contratista o sus empleados acuden frecuentemente pero no diariamente, deberán cumplir con lo anterior cada vez que visite las facilidades gubernamentales en distintas semanas. Las autoridades nominadoras de las agencias públicas, o la persona en quien éstas deleguen, deberán asegurarse del cumplimiento con lo anterior.
- 2. En el caso de empleados de las facilidades del sector de la salud, de los hoteles, paradores y hospederías semanalmente deberán presentar un resultado negativo de COVID-19 proveniente de una prueba viral cualificada SARS-CoV2 (pruebas de amplificación del ácido nucleico ("NAAT") o pruebas de antígeno) realizada dentro de un término máximo de setenta y dos (72) horas antes, o un resultado positivo a COVID-19 de los pasados tres (3) meses, junto con documentación de su recuperación, incluyendo una carta de un proveedor de salud certificado o de algún oficial gubernamental de salud que certifique que la persona está recuperada y lista para comparecer a lugares públicos. El patrono, o la persona en quien éste delegue, deberá asegurarse del cumplimiento con lo anterior al comienzo de cada semana.
- 3. Por último, en el caso de los huéspedes de los hoteles, paradores y hospederías, incluyendo los alquileres a corto plazo, la persona podrá hospedarse si al comenzar su estadía presenta ante el empleado correspondiente un resultado negativo de COVID-19 proveniente de una prueba viral cualificada SARS-CoV2 (pruebas de amplificación del ácido nucleico ("NAAT") o pruebas



de antígeno) realizada dentro de un término máximo de setenta y dos (72) horas antes, o un resultado positivo a COVID-19 de los pasados tres (3) meses, junto con documentación de su recuperación, incluyendo una carta de un proveedor de salud certificado o de algún oficial gubernamental de salud que certifique que la persona está recuperada y lista para comparecer a lugares públicos. Si la persona se hospeda por más de una semana, deberá presentar lo anterior de forma semanal. La gerencia del lugar deberá asegurarse del cumplimiento con lo anterior al comienzo de cada semana.

SECCIÓN 6a:

NEGACIÓN A VACUNACIÓN. Cualquier contratista, empleado de éste o empleado de las facilidades del sector de la salud, de los hoteles, paradores y hospederías, y los huéspedes de estos que no presente su certificado de inmunización ("COVID-19 Vaccination Record Card") o documento en el que se acredite que ha completado o iniciado su proceso de vacunación contra el COVID-19, y que no le aplique alguna de las excepciones, deberá mientras dure la emergencia declarada en el Boletín Administrativo Núm. OE-2020-020— cumplir con lo siguiente: presentar un resultado negativo de COVID-19 proveniente de una prueba viral cualificada SARS-CoV2 (pruebas de amplificación del ácido nucleico ("NAAT") o pruebas de antígeno) realizada dentro de un término máximo de setenta y dos (72) horas antes, o un resultado positivo a COVID-19 de los pasados tres (3) meses, junto con documentación de su recuperación, incluyendo una carta de un proveedor de salud certificado o de algún oficial gubernamental de salud que certifique que la persona está recuperada y lista para comparecer a lugares públicos. Esto lo deberá hacer según las condiciones dispuestas en la Sección 5ª de esta Orden Ejecutiva.

De las personas antes indicadas no presentar su certificado de inmunización ("COVID-19 Vaccination Record Card"), el resultado negativo a COVID-19 semanal ni el resultado positivo a COVID-19 con documentación de su recuperación, y de no cumplir con alguna de las excepciones detalladas en esta Orden Ejecutiva, estarán sujetas a las siguientes medidas:

 De ser un contratista gubernamental o empleado de éste no podrá acudir de forma presencial a las agencias gubernamentales. Si por las funciones del contratista o si a discreción de la agencia contratante es necesaria su presencia física en la oficina, la entidad gubernamental podrá tomar las



medidas contractuales pertinentes, lo que podría incluir —pero sin limitarse— a la cancelación del contrato.

- 2. De ser la persona un empleado de las facilidades del sector de la salud, de los hoteles, paradores y hospederías no podrá acudir a trabajar de forma presencial. Por ende, el patrono deberá tomar las medidas pertinentes aplicables, incluyendo permitir acogerse a las licencias regulares aplicables o a una licencia sin sueldo.
- 3. De ser la persona un huésped de un hotel, parador o hospedería, incluyendo los alquileres a corto plazo, éste no podrá pernoctar en el referido lugar hasta tanto y en cuento cumpla con las disposiciones de esta Orden Ejecutiva.

SECCIÓN 7a:

GUÍAS Y REGLAMENTACIÓN. El Departamento de Salud, el Departamento del Trabajo y Recursos Humanos, la Oficina de Administración y Transformación de los Recursos Humanos del Gobierno de Puerto Rico ("OATRH") y la Compañía de Turismo del Departamento de Desarrollo Económico y Comercio deberán establecer las guías y la reglamentación pertinente, según el sector aplicable, para hacer cumplir lo ordenado en esta Orden Ejecutiva. Además, deberán fiscalizar que se cumpla con lo aquí dispuesto. Por último, delego a estas agencias el poder de interpretar lo ordenado en esta Orden Ejecutiva.

SECCIÓN 8a:

INCUMPLIMIENTO. Ante el incumplimiento con las disposiciones contenidas en esta Orden Ejecutiva por cualquier persona y/o empresa, se implementarán las sanciones penales y aquellas multas establecidas por el Artículo 5.14 de la Ley Núm. 20-2017, según enmendada, la cual establece pena de reclusión que no excederá de seis (6) meses o multa que no excederá de cinco mil (\$5,000) dólares o ambas penas a discreción del tribunal y de cualquier ley aplicable. De igual forma, conforme a las disposiciones del Art. 33 de la Ley orgánica del Departamento de Salud, "[t]oda persona natural o jurídica que infrinja las disposiciones de esta ley o de los reglamentos dictados por el Departamento de Salud al amparo de los mismos incurrirá en delito menos grave y sentenciado que podrá ser sancionada con pena de reclusión que no excederá de seis (6) meses o multa no mayor de cinco mil dólares (\$5,000) o ambas penas a discreción del tribunal".

De incumplir con las disposiciones de esta Orden, la persona estará sujeta a enfrentar un proceso penal, el cual deberá ser iniciado sin dilación alguna por el Ministerio Público, quien, a su vez, deberá



solicitar fijación de fianza, según lo establecen las Reglas de Procedimiento Criminal.

SECCIÓN 9a:

MUNICIPIOS, CORPORACIONES PÚBLICAS Y OTRAS RAMAS DE GOBIERNO. Se recomienda a la Asamblea Legislativa, al Poder Judicial, a las corporaciones públicas y a los municipios a tomar medidas similares a las aquí dispuestas en cuanto a los contratistas privados, a los fines de garantizar y proteger la vida de todos sus empleados y del público que los visita o que necesita de sus servicios.

SECCIÓN 10a:

<u>DEFINICIÓN DEL TÉRMINO AGENCIA</u>. Para fines de esta Orden Ejecutiva, el término "agencia" se refiere a toda agencia, instrumentalidad, oficina o dependencia de la Rama Ejecutiva del Gobierno de Puerto Rico, independientemente de su nombre.

SECCIÓN 11a:

NO CREACIÓN DE DERECHOS EXIGIBLES. Esta Orden Ejecutiva no tiene como propósito crear derechos sustantivos o procesales a favor de terceros, exigibles ante foros judiciales, administrativos o de cualquier otra índole, contra el Gobierno de Puerto Rico o sus agencias, sus oficiales, empleados o cualquiera otra persona.

SECCIÓN 12^a:

SEPARABILIDAD. Las disposiciones de esta Orden Ejecutiva son independientes y separadas unas de otra. Si un tribunal con jurisdicción y competencia declarase inconstitucional, nula o inválida cualquier parte, sección, disposición u oración de esta Orden Ejecutiva, la determinación a tales efectos no afectará la validez de las disposiciones restantes, las cuales permanecerán en pleno vigor.

SECCIÓN 13^a:

DEROGACIÓN. Esta Orden Ejecutiva dejará sin efecto, al momento de su vigencia, las partes de todas aquellas órdenes ejecutivas que, en todo o en parte, sean incompatibles con ésta hasta donde existiera tal incompatibilidad.

SECCIÓN 14^a:

<u>PUBLICACIÓN</u>. Esta Orden Ejecutiva debe ser presentada inmediatamente en el Departamento de Estado y se ordena su más amplia publicación.

SECCIÓN 15^a:

<u>VIGENCIA</u>. Esta Orden Ejecutiva entrará en vigor el 16 de agosto de 2021, y se mantendrá vigente hasta que sea dejada sin efecto la emergencia declarada en el Boletín Administrativo Núm. OE-2020-020, o hasta que esta Orden sea enmendada o revocada por una Orden Ejecutiva posterior o por operación de ley.



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EN TESTIMONIO DE LO CUAL, expido la presente Orden Ejecutiva bajo mi firma y hago estampar el gran sello del Gobierno de Puerto Rico, en La Fortaleza, en San Juan, Puerto Rico, hoy 5 de agosto de 2021.

PEDRO R. PIERLUISI GOBERNADOR

Promulgada de conformidad con la ley, hoy 5 de agosto de 2021.

OMAR J. MARRERO DÍAZ SECRETARIO DE ESTADO Case 3:21-cv-01411 Document 1-3 Filed 08/27/21 Page 1 of 6



August 6, 2021

To: All Tourism Stakeholders

From: Carlos Mercado **Executive Director**

Re: Updated guidance for tourism businesses for the implementation of the Executive Order 2021-062 with measures applicable effective August 16, 2021 and the measures currently in place regarding the use of face coverings, point of entry requirements and capacity limitations.

Dear Tourism Industry Stakeholders,

The Governor, Hon. Pedro Pierluisi, signed and published Executive Order 2021-062 that dictates the updated health and safety measures that are applicable to our sector beginning next Monday, August 16, 2021.

Given the recent increase in the rate of positivity, in infections and in hospitalizations in Puerto Rico in the United States, the Executive emoted a series of safety measures directed to mitigate the community transmission of the COVID-19 and its variants.

What follows are the guidelines on the applicability of this recent **Executive Order** for all tourism operations for the period beginning August 16, 2021. Note that these measures do not have an end term in sight. Changes to the existing measures will be conducted with upcoming Executive Orders and/or Administrative Orders from the Department of Health that can be found HERE.

Vaccination requirement for tourism businesses:

Guests: It is a national mandate that all guests must be properly inoculated with any of the three vaccines authorized by the FDA (Janssen (J&J), Moderna or Pfizer) in order to be allowed in the facilities.

The vaccination requirement is applicable to any person staying 1 night or more at any hotel, bed and breakfast (B&B), short-term rental, hostel, glamping facility, guest houses, tourism villas, condo-hotels and Paradores and Posadas de Puerto Rico.

If by any reason the guest can not provide the vaccination card or proper proof of vaccination, the guest is required to provide evidence of a COVID-19 test taken within 72 hours of checking in. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test.



Guests that fail to present either the proper vaccination proof or the negative COVID-19 test within 72 hours of check in, cannot be permitted to remain in the facilities.

Per the requirement established in the Health and Safety program of the Puerto Rico Tourism, the assigned Health and Safety Officer, manager or owner of the lodging establishment are responsible to implement a screening process to secure the implementation of the mandate described above.

Employees and Staff Members: As a national mandate, all employees or contracted staff working in lodging businesses must be duly inoculated with any of the three vaccines authorized by the FDA (Janssen (J&J), Moderna or Pfizer) in order to be physically allowed to work at the establishment. This is applicable to staff members working in the property including casinos, gym, spa, pool, beach, golf courses, experience providers and concessionaries.

The vaccination requirement is applicable to any employee in hotels, bed and breakfasts (B&B), short-term rentals, hostels, glamping facilities, guest houses, tourism villas, condo-hotels and Paradores and Posadas de Puerto Rico.

If by any reason the employee cannot provide the vaccination card or proper proof of vaccination, the employee must present weekly evidence of a COVID-19 test taken within 72 hours of the weekly check point.

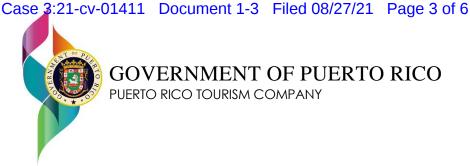
The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test.

This weekly check point to the unvaccinated employees must take place every 7 calendar days until the employee presents proof of vaccination.

Employees that fail to present either the proper vaccination proof or the negative COVID-19 test within 72 hours of check in, cannot be permitted to work physically in the facilities.

Note that if a non-inoculated employee begins the vaccination cycle prior to the effective date of August 16, 2021, he or she can present evidence of the first dose inoculation to be allowed to work physically at the establishment. However, that employees must subsequently comply with the complete the inoculation cycle by September 30, 2021.

Per the requirement established in the Health and Safety program of the Puerto Rico Tourism, the assigned Health and Safety Officer, manager, owner and human resources official of the establishment are responsible to implement a screening process to secure the implementation of the mandate described above.



Non-lodging services: The Puerto Rico Tourism Company strongly recommends that all non-lodging tourism services adapt the vaccination or negative test requirement stated in the Executive Order. This vital recommendation is for areas including casinos, gyms, spa, pool and beach facilities, restaurants and bars within lodging properties, tour operations and guides, tourist transportation businesses, attractions, entertainment facilities, museums, and experiences providers among others.

Specifically:

- Patrons attending any event hosted at any lodging property are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to the event.
- Patrons visiting or consuming any service at any lodging property including restaurants, bars, nightclubs, gyms, and spa are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to entering the facilities.
- Casino patrons are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to accessing the casino area.
- Day passes holders at lodging properties are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to accessing the facilities.
- Patrons visiting museums, attractions or consuming any tour or experiences are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to accessing the facilities.

Non-Compliance of the newly executed measures: A guest and business not complying with the established measures are subject to a sentence of imprisonment that will not exceed six (6) months or a fine of no more than five thousand dollars (\$ 5,000) or both penalties at the discretion of the court.

Short-term rentals: Legally and properly registered properties are the only properties authorized to operate.

- Short-term rental properties, duly registered and identified by their Innkeepers at the PRTC, as per Act 272-2003, are authorized to operate. For information on registration and identification visit HERE. If a listing is not duly registered, it's illegally operating and is subject to fines and penalties as outlined under Act 272-2003 and Executive Order 2020-044.
- Strict compliance of the terms established in the updated <u>Health and Safety Program</u> are required of all short-term rental properties.

Vaccination requirement: It is a national mandate that all guests staying at a short-term rental must be properly inoculated with any of the three vaccines authorized by the FDA (Janssen (J&J), Moderna or Pfizer) in order to be allowed in the property.

The vaccination requirement is applicable to any person staying 1 night or more at short-term rental in Puerto Rico.



If by any reason the guest cannot provide the vaccination card or proper proof of vaccination, the guest is required to provide evidence of a COVID-19 test taken within 72 hours of checking in. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test.

Guests that fail to present either the proper vaccination proof or the negative COVID-19 test within 72 hours of check in, cannot be permitted to stay in the property.

Per the requirement established in the Health and Safety program of the Puerto Rico Tourism, the property manager is responsible to implement a screening process to secure the implementation of the mandate described above.

Non-Compliance of the newly executed measures: A guest and property manager not complying with the established measures are subject to a sentence of imprisonment that will not exceed six (6) months or a fine of no more than five thousand dollars (\$ 5,000) or both penalties at the discretion of the court.

Use of Face Coverings or Masks for Patrons and Employees: As updated with the most recent Administrative Order 512 of the Department of Health, the existing local mandate regarding the use of mask is as follows:

Patrons in Indoor Spaces: Regardless of vaccination status, all customers are required to wear a mask or face covering indoors.

Patrons in Outdoor Areas: Regardless of vaccination status, all patrons are required to wear a mask in outdoor areas where the safe distancing minimum of 6ft between customers can not be observed.

Employees: All staff members must wear a mask or face covering at all times while on duty. This mandate is applicable to all work force, regardless of the vaccination status. Masks must be worn by staff members in all business settings including indoor and outdoor spaces, back office or behind the scenes.

Destination-Wide Health & Safety Program: As a reminder, the mandatory Health and Safety Program for all tourism businesses released last July 7, 2021 is available HERE.

This the deadline to have completed the acknowledgement form was last July 31, 2021. All travel and tourism businesses must have completed the online form and attest that they have read the updated guidelines and have applied the measures successfully in their businesses.

Regardless of having completed the previous acknowledgement form or having received the Health and Safety Certification, this updated acknowledgement form should have been filled by all businesses.



The applicable businesses required to follow through the implementation of the Health and Safety Program are:

Bed and Breakfasts (B&B) Alternative Lodgings **Short-Term Rentals** Hostels

Glamping Facilities **Guest Houses Tourism Villas** Condo-Hotels

Hotels Paradores and Posadas de Puerto Rico Casinos

Tour Operators Certified Tour Guides **Travel Agencies**

Excursions Wholesalers Restaurants, bars, and nightclubs within lodging properties

Cultural Attractions

Passenger Arrival Requirements. The point of entry requirements and protocol have not changed with the recent Administrative Order. The protocol in place continues to be the one implemented on May 25th via Executive Order 2021-037. In summary:

The completion of the Travel Declaration Form continues to be mandatory for all arriving passengers. The following are the entry requirements for the following three scenarios:

- A. Fully vaccinated travelers flying in from any US domestic destination are no longer required a negative PCR molecular test result within 72 hours of arrival, as long as they can prove vaccination administration. Vaccinated passengers will have the opportunity to upload their official Vaccination Card through the Travel Declaration Form portal; or
- B. Non-vaccinated travelers arriving from a US Domestic destination are still required to provide evidence of a pre-departure COVID-19 test taken within 72 hours of arrival. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test; or
- C. International arriving passengers, regardless of vaccination status, are required to provide evidence of a pre-departure negative COVID-19 test taken within 72 hours of arrival as required by the CDC. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test taken at an authorized center.

One person is considered fully vaccinated two (2) weeks after the second dose was administered for the Pfizer or Moderna vaccines, or two (2) weeks after receiving the only dose of the Johnson & Johnson's Janssen vaccine.

Capacity Limitations: Current Administrative Order does not impose capacity limitations.

Operations schedule limitations: Current Administrative Order does not impose hour of operations constraints.

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Reporting of Suspicious or Confirmed Cases: Each employer, including owners of businesses, must immediately report suspicious and confirmed COVID-19 cases among its workforce or patrons. The business must reach out to the Department of Health via the following email address: covidpatronos@salud.pr.gov.

Questions or Additional Support: If you need support with the clarification of the Executive Orders or Administrative Orders, or with any matter regarding the <u>Updated Health and Safety Program</u> for all tourism businesses, please feel free to reach out to Ana Leticia Velez via: Ana.Velez@tourism.pr.gov.



OFICINA DEL GOBERNADOR

Gobernador ordena vacunación a empleados de industria de salud y hospederías turísticas

(Con excepción de quienes presenten situaciones médicas o religiosas)

5 de agosto de 2021- El gobernador de Puerto Rico, Pedro R. Pierluisi, ordenó hoy en la Orden Ejecutiva 2021-062 que todos los contratistas del gobierno que frecuenten de manera presencial su trabajo, así como todos los empleados que trabajen en sector de la Salud público o privado deben estar vacunados o contar con algunas de las exepciones. También, se ordena a todos los huéspedes de hoteles, paradores, hospederías o alquileres de corto plazo a presentar prueba de inoculación.

La Orden establece que todo contratista del gobierno que trabaje de forma presencial tendrà que presentar evidencia de vacunación o prueba negativa semanalmente. Los que se vacunen deben terminar el proceso en o antes del 30 de septiembre.

Como en la pasada Orden Ejecutiva contra el COVID-19, las excepciones serán las personas con condición médica cuya salud pueda perjudicarse, pero deberán tener un certificado médico a esos fines certificado por un profesional de la salud. Asimismo, personas que por motivos religiosos decidieron no vacunarse tendrá que ser certificado mediante declaración jurada del líder de su congregación o denominación religiosa. Sin embargo, deberán presentar pruebas negativas de COVID-19 o prueba positiva con certificado médico de recuperación.

"Como he dicho en otras ocasiones estamos ante una emergencia de salud pública mundial y está en cada uno de nosotros protegernos y por tanto proteger a nuestra comunidad. Todos tenemos que remar juntos en la misma dirección para vencer este virus. Estas estrategias de vacunación, así como las acciones del Departamento de Salud haciendo pruebas por todo Puerto Rico, llevando las vacunas a zonas remotas y exigiendo las mascarillas en espacios cerrados o en lugares donde existen aglomeraciones, son esenciales para combatir el COVID-19. Continuamos monitoreando el avance de los contagios y no descartamos tomar medidas adicionales, tales como limitar horarios de actividades públicas y comerciales o reducir la capacidad permitida en los establecimientos. Todos tenemos que cooperar", sentenció el gobernador.

Por su parte, el secretario de Salud, Carlos Mellado, "continuamos la lucha para hacerle frente al COVID-19. Mientras haya personas sin vacunar, vamos a continuar viendo escenarios como el de las últimas dos semanas; aumento de contagios y nivel de posibilidad alta. Sin embargo, en nuestra misión de salvaguardar la salud de todos los ciudadanos en la Isla nos dirigimos a tomar medidas importantes de seguridad. La exhortación es la inmunización mediante la vacuna contra el virus, lavado de manos, uso

de mascarilla, distanciamiento y protegeremos para cuidar a los nuestros. Es nuestra responsabilidad comunitaria. Queremos controlar la pandemia, pero necesitamos la cooperación de toda la ciudadanía".

El secretario de salud, dio a conocer una enmienda a Reglamento Núm. 138-A para establecer como requisito para la expedición de certificados de salud en Puerto Rico, presentar la tarjeta de vacunación contra el COVID-19. "A partir de hoy toda persona que requiera un certificado de salud deberá estar vacunado contra el COVID-19 para obtenerlo".

En el caso de las instalaciones de salud, se requerirá la vacunación o en la alternativa una prueba negativa de COVID-19 semanalmente a todos los empleados. Esto incluye, pero no se limita, a hospitales, laboratorios clínicos, oficinas médicas, centros de salud y de terapias, bancos de sangre, farmacias. Este requerimiento es extensivo a todos los que laboran en centros de cuido diurno o prolongados de adultos mayores.

En torno a la industria turística, los huéspedes de hoteles-paradores-hospederias induyendo los alquileres de corto plazo a través de plataformas como AIRBNB/VRBO/Join a Join entre otras tendrán de igual forma que presentar evidencia de vacunación o prueba negativa de COVID-19. En el caso de turistas que llegaron a Puerto Rico con prueba negativa de COVID-19 y su estadía se prolonga por más de una semana, tendrán que realizarse otra prueba.

Este requerimiento es extensivo a los empleados de los hoteles-paradores y hospederías, quienes deberán tener su ciclo de vacunación completado antes del próximo 30 de septiembre. De hecho, Pierluisi y Mellado recomendaron a los concesionarios de estos establecimientos que apliquen reglas como esta a sus empleados.

Cada agencia o empresa será responsable de asegurar el cumplimiento de esta Orden y de no cumplirla se exponen a multas de hasta seis meses de carcel, multa que no exceda \$5 mil o ambas a discreción del Tribunal.

"Reiteramos nuestra recomendación a las otras Ramas de gobierno, corporaciones públicas, municipios, establecimientos privados y comerciales a adoptar esta Orden Ejecutiva de forma voluntaria", concluyó Pierluisi.





GOVERNMENT OF PUERTO RICO LA FORTALEZA SAN JUAN, PUERTO RICO

Administrative Bulletin Number: OE-2021-063

EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. PEDRO R. PIERLUISI, FOR THE PURPOSES OF REQUIRING MANDATORY COVID-19 VACCINATIONS AND SCREENING FOR THE RESTAURANT, BAR, THEATHER, CINEMA, STADIUM, AND ACTIVITY CENTER SECTORS, AMONG OTHERS.

WHEREAS:

Since March 12, 2020—after the first cases of COVID-19 were recorded on our Island—we have been in a state of emergency to address the pandemic we are currently facing. From that date, countless strategies have been employed to control it. The most recent one was issuing administrative bulletins OE-2021-058 and OE-2021-062, in which public employees and contractors working for the Executive Branch of the Government, as well as employees in the healthcare sector and hotel employees and clients, to present a certificate of immunization against said virus, subject to certain exemptions and available alternatives.

WHEREAS:

Currently, the rise in cases continues to accelerate. The data provided by the Puerto Rico Department of Health indicates the daily average for confirmed cases has increased to 288 positive cases. Exactly one month ago, that figure was approximately 57 cases, which is why this increase in infections may compromise our hospitals' capacity to respond. Concerning this particular point, the statistics confirm an increase in hospitalizations in recent days, totaling 346 hospitalized individuals, including 76 adults and 2 children who are in intensive care units. Statistically, one month ago, the number of adults hospitalized due to COVID-19 only represented 1%. Today, that number is 4%. In the case of intensive care units, there was an increase of 11%. There has been an increase from 2% to 3% in cases involving minors, and intensive pediatric care has increased to 2%. At the same time, the positive rate, which means the percentage of people who received a positive result out of all people tested for the virus, continues at an average of 11.42%, which represents an 8.6% increase from the previous month.

In the United States, the data is either similar or even more concerning than in Puerto Rico. Average weekly cases increased to over 120,000 cases, a number not reached since November 2020, before COVID-19 vaccinations were available. At a global





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level, the average is over 570,000 cases. This increase is partly due to the emergence of the *Delta* variant. Said increase is alarming and requires that the Government take new actions to control the spread and protect the lives of all citizens. Therefore, the Government has a responsibility and a pressing and vital interest to protect the lives of others, requiring that the risk of infection is minimized at activities and places where there is a high potential for exposure to the virus.

WHEREAS:

The increase in the rate of positive results, infections, and hospitalizations in Puerto Rico and in the United States have common factors that cannot be ifnored: individuals not vaccinated against COVID-19. According to data from the Department of Health and official entities in the United States, the vast majority of infected and hospitalized individuals are unvaccinated. This has cause an increase in infections within the community.

WHEREAS:

The scientific data coolected in Puerto Rico shows the great effectiveness of the vaccine. In particular, it has been concluded that only 7.5% of total recorded COVID-19 cases correspond to fully vaccinated individuals. Therefore, the risk of infection for unvaccinated individuals is 6.9 times greater than the risk for those who are vaccinated. As for hospitalizations, only 4.5% of patients are vaccinated individuals. This means that the risk of an unvaccinated individual being hospitalized is 12.2 times greater than the risk for vaccinated individuals. Lastly, regarding deaths, only 2.5% of total deaths related to COVID-19 correspond to fully vaccinated individuals. This indicates that the risk of death for unvaccinated individuals is 25.7 times greater than the risk for vaccinated individuals. This is to say that being vaccinated is at least 3 times better for avoiding infection, 8 times better for avoiding hospitalization, and 16 times better for avoiding death due to COVID-19.

WHEREAS:

Scientific evidence shows that the most effective measure for controlling COVID-19 is vaccination. As it was thoroughly explained in Administrative Bulletin OE-2021-058, the World Health Organization (WHO) has determined that the available vaccines are safe and efficient, and that they prevent people from becoming gravely ill or dying due to SARS-CoV2. Therefore, the WHO recommends vaccination, even for those who have already been infected with COVID-19.





The United States Food and Drug Administration (FDA) has similarly indicated that the 3 COVID-19 vaccines it has authorized for emergency use do work, as they prevent said illness and its severe effects on a person's health, including hospitalization and death. It has also stated that the available information suggests that the authorized vaccines protect against the variants that are currently circulating. Therefore, the FDA—an agency in charge of evaluating and authorizing the vaccines—has promoted vaccination as an effective method for reducing the spread of COVID-19.

Lastly, the Centers for Disease Control and Prevention (CDC) has stated that COVID-19 vaccines are safe and effective, especially for preventing severe cases and death. It has asserted that they can prevent people from becoming infected and spreading the virus. In addition, they help prevent people from becoming severely ill even when they become infected with COVID-19, and they help protect their families and those around them. It also clarified that the vaccines are not experimental, because they have gone through the required stages in the clinical trials. Therefore, it sustains that the safest option for fighting said pandemic is to undergo vaccination for COVID-19.

WHEREAS:

In Puerto Rico, vaccinations are well underway. To date—according to data from the CDC—over 78.2% of people who can be vaccinated have received at least one dose. Approximately 68.1% of people who can be vaccinated are fully vaccinated. This data, along with the few recorded adverse reactions, confirm that COVID-19 vaccinations are safe and efficient.

WHEREAS:

It is important to highlight that, to date, 1,939,815 people in Puerto Rico are fully vaccinated. This means that 60.7% of our island's total population is fully vaccinated, and that a significant percentage of people have yet to be vaccinated. In addition, the cumulative count of administered doses shows that vaccination has declined in recent days, that is to say, not a lot of people are being vaccinated on a daily basis. Said fact has delayed the goal of achieving so-called "heard immunity," or the point at which the virus cannot spread because the community is protected. Be





advised that until said milestone is achieved, Puerto Rico is at risk of suffering the most severe consequences of COVID-19.

WHEREAS:

What is happening in Puerto Rico regarding vaccination is consistent with what is happening in other jurisdictions. At a global level, only slightly over 15.6% of the total population is fully vaccinated, and 30.2% have received a single dose. In the United States, only 49.8% are fully vaccinated and 59.9% of the total population has received a single dose. These numbers confirm the need to implement measures in Puerto Rico that guarantee the population's safety in places with high exposure to the virus.

WHEREAS:

Regarding vaccinations in general, as stated in Administrative Bulletin OE-2021-058, the United States Supreme Court has examined the State's authority to regulate its use. In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), mandatory smallpox vaccination was challenged. Addressing the case, the Court determined that the freedom granted by the Constitution of the United States is not an absolute right and is subject to reasonable restrictions that the government believes are necessary to promote the safety, health, peace, good order, and morals of the community.

Not satisfied with that, in *Zucht v. King*, 260 U.S. 174 (1922), the United States Supreme Court upheld a law from the state of Texas that prohibits unvaccinated children from attending school. In its reasoning, it concluded that what was ordered did not establish an arbitrary power, but rather an ample discretion required to address and protect public health.

Therefore, in both cases, the United States Supreme Court upheld the state's authority to reasonable mandate vaccinations.

WHEREAS:

In the case of Puerto Rico, in *Lozada Tirado v. Testigos de Jehová*, 177 DPR 893 (2010), our Supreme Court acknowledged that, although people have a right to decline a medical treatment, this right is not absolute. Using federal case law as a basis (*Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)), the Court concluded that the State may have certain interests that must be taken into account, such as the protection of third parties. This last one applies when intending to submit citizens to a certain medical treatment during a public health crisis. Thus, it was acknowledged that the State may require certain vaccines in a mandatory capacity





when facing the threat of a pandemic. *Id.*, n. 13.

WHEREAS:

Certainly, people have a constitutional right to decline a medical treatment. However, unlike individual treatments that do not affect the health of others, vaccinations are intended to combat a collective enemy, not an individual one. It is for that reason that vaccinations have been considered one of the 20th century's greatest achievements in public health. See Bruesewitz v. Wyeth LLC, 562 U.S. 223, 226 (2011).

WHEREAS:

In the case of COVID-19 vaccines, even though there is no binding case law, as recently as August 2, 2021, the United States Court of Appeals for the Seventh Circuit confirmed the decision of the federal District Court of Indiana. In this case, students and employees were required to be fully vaccinated to attend university in person. In addressing the case, the Court of Appeals decided that, according to *Jacobson v. Massachusetts, supra*, there was no constitutional obstacle to requiring said vaccination. It based its decision on the fact that, unlike *Jacobson*, in Indiana there was more latitude because they allowed certain exemptions and the vaccine was not mandatory for all citizens, instead it was a condition for attending university. See Klaasen v. Trustees of Indiana University, 2021 WL 3281209; Klaasen et al v. The Trustees of Indiana University, 2021 WL 3025893.

On the other hand, in *Bridges v. Houston Methodist Hospital*, 2021 WL 2399994, employees of a hospital in Texas were required to be vaccinated against COVID-19. The federal District Court upheld the hospital's actions and the vaccination requirement. It believed that conditioning employment to a vaccine is not a form of coercion and that it may be part of the job's conditions.

WHEREAS:

Consistent with the above, on July 6, 2021, the United States Department of Justice issued an Opinion through its Office of Legal Counsel (OLC) in which it concluded that federal provisions authorizing the emergency use of COVID-19 vaccines does not prohibit public and private entities from imposing SARS-CoV2 vaccinations as a requirement. That is to say, in their understanding, Section 564 of the *Food, Drug, and Cosmetic Act* (FDCA), 21 USC sec. 360bbb-3, only requires that whoever is going to administer a vaccine to a person inform them of the type of authorization given, the potential benefits and risks, and the





option to accept or decline the vaccine, including informing them of the consequences of declining it.

WHEREAS:

Not satisfied with the above, on July 29, 2021, the President of the United States, Joseph R. Biden Jr., required all federal employees and contractors to undergo vaccination or weekly COVID-19 testing. This occurred after the United States Department of Veteran Affairs was the first federal agency to implement a requirement for all healthcare workers to be vaccinated.

Several states and cities have also announced that they will require their employees to be vaccinated. The city of New York was the first to make such an announcement. Mayor Bill de Blasio ordered that, starting on September 13, 2021, all municipal employees must be vaccinated or, as an alternative, must undergo weekly COVID-19 testing. He also required vaccinations for people visiting indoor establishments, such as restaurants, theaters, and gyms. In said state, the Governor ordered that hospital employees be vaccinated by September 6, 2021. In addition, it was ordered that transportation employees must be vaccinated or present a negative COVID-19 test result on a weekly basis.

For its part, the state of California will require vaccinations for all of its public employees or, as an alternative, negative COVID-19 test results starting this month. Similarly, the governor of New Jersey, Phill Murphy, ordered mandatory vaccinations for healthcare employees and employees working at extended care centers and prisons, among others; as an alternative they may undergo weekly COVID-19 testing.

WHEREAS:

As recently as August 6, 2021, the Court of First Instance of San Juan issued a Judgment in which it upheld the vaccination requirement at schools in Puerto Rico. In its pertinent parts, it declared that "the State has an urgent interest in safeguarding public health and taking all necessary measures to effectively combat a pandemic that has affected the lives of every person on this planet and that is simply unprecedented in recent history. Without a doubt, these measures include requiring vaccinations against said disease and the use of masks in indoor spaces where people are close together, such as schools and universities." It therefore concluded that "because it is our understanding that the executive and administrative orders in question are based on





accurate and verifiable scientific data, and that, in addition, they are carefully designed to provide reasonable accommodations for those who qualify and need them, we concluded that they are valid and completely in line with the applicable constitutional parameters."

WHEREAS:

After declaring a state of emergency, Article 5.10 of Act 20-2017, as amended, known as the "Puerto Rico Public Safety Department Act," empowers me, as Governor, to establish any measures deemed necessary for the duration of the emergency in order to manage it with the goal of securing the health, property, and safety of Puerto Rico's residents.

WHEREAS:

Subsection (b) of Article 5.10 of Act 20-2017 establishes that, as Governor of Puerto Rico, I may enact, amend, or repeal any regulation, and to enact, amend, or rescind any order as deemed appropriate to govern during the state of emergency or disaster. The regulations enacted or orders issued during a state of emergency shall have the force of law during said state of emergency.

WHEREAS:

The Government of Puerto Rico has a responsibility to make the necessary efforts to prevent and stop the spread of COVID-19 and safeguard the health, lives, and safety of Puerto Rico's residents.

WHEREAS:

The power to govern a community comes with a great responsibility to ensure that its people are safe and healthy. The power of reason of State—as delegated to the Executive Branch by Act 20-2017—empowers the government to take the necessary measures to protect the health and safety of its people. That is to say, it is the State's inherent power which allows for the creation and enactment of regulations in general for the purposes of protecting public health, safety, and wellbeing. In order to secure these benefits for the community, the State has the power to restrict certain personal interests, which are not absolute.

WHEREAS:

With the specific objective of safeguarding the health of the people of Puerto Rico, clear and decisive action must be taken to ensure that each citizen is healthy. This Government has an urgent and important interest to safeguard the lives of the people and to ensure to minimize the risk of infection in everyday activities and at places where exposure to the virus is high. A necessary step for achieving these objectives is to implement decisive actions—such





as requiring vaccinations or negative COVID-19 test results—at locations where prepared food and drink are sold, such as restaurants, theaters, cinemas, stadiums, and activity centers, which will prevent infections at these facilities.

WHEREAS:

The COVID-19 pandemic presents a dynamic and changing scenario that requires the Government to redesign its strategies in order to appropriately manage infections in the population.

WHEREAS:

In light of the significant rise in infections, I, as Governor, have a responsibility and duty to continue to carefully monitor the daily statistics issued by the Department of Health, and take the necessary measures to safeguard everyone's health. Should these measures not have a significant impact on the increase in infections, I shall be forced to implement additional restrictions.

WHEREAS:

I must emphasize that each citizen has an individual responsibility to exercise good judgment and care in any personal, commercial, or professional activity they are attending or involved in. If every Puerto Rican follows all of the precautionary measures issued by the CDC and the administrative orders issued by the Department of Health concerning COVID-19, there is no doubt that we would all be safer. Therefore, each citizen has a responsibility to continue following the precautionary measures issued by the Secretary, and to use good judgment and not participate in any activity they believe would put their health or the health of others at risk.

THEREFORE:

I, PEDRO R. PIERLUISI, Governor of Puerto Rico, by virtue of the powers inherent to my office and the authority vested in me by the Constitution and the laws of the Government of Puerto Rico, hereby declare and order the following:

Section 1:

EMPLOYEE VACCINATION REQUIREMENTS. In order to minimize infections and successfully safeguarding the health of Puerto Rico's population, I hereby order that once this Executive Order enters into force, restaurants (including fast food restaurants, food courts, and cafeterias), bars, "chinchorros", cafés, sports bars, theaters, cinemas, stadiums, convention or activity centers, and any other establishment—either indoor or outdoor—that sells prepared food or drink, must require all employees who work there in person to be fully vaccinated with a vaccine authorized by the FDA to address the COVID-19 emergency. For the purposes of this requirement, it shall be





sufficient for the employee to show that they have started the vaccination process with the first dose by the date this Executive Order goes into force, which, to wit, is August 23, 2021. However, the employee must comply with and later present evidence to their employer of having received the second dose, if the type of vaccine they have been administered requires so. They shall have until October 7, 2021 to do so.

It shall be the responsibility of each employer, or a person to whom they have delegated, to request employees to present a certificate of immunization (COVID-19 Vaccination Record Card) or a document that proves they have completed or initiated their COVID-19 vaccination process. For their part, it shall be the employee's responsibility to present their certificate immunization (COVID-19 Vaccination Record Card) or a document that proves they have completed or initiated their COVID-19 vaccination process in order to be permitted to work in person. Certificates of immunization may be substituted with any other physical or digital method authorized for verifying vaccination status.

For the purposes of this Executive Order, the term employee applies to any natural person who works physically or in person—including contractors, but not suppliers—in exchange for a salary, wages, compensation, emolument, or any type of remuneration at a restaurant (including fast food restaurants, food courts, and cafeterias), bar, "chinchorro", café, sports bar, theater, cinema, stadium, convention or activity center, and any other establishment—either indoor or outdoor—that sells prepared food or drink, even in a partial capacity. For the purposes of the vaccination requirement, as established in this Executive Order, individuals who are providing services in a voluntary and in-person capacity at these establishments shall also be considered employees.



Section 2:

EMPLOYEE EXEMPTIONS. For the purposes of this Order, individuals whose immune systems are compromised and for whom the COVID-19 vaccine may be detrimental to their health shall be exempted from the vaccination requirement. Similarly, individuals who have other medical contraindications that preclude



their inoculation shall be exempted. This must be certified by a physician authorized to practice medicine in Puerto Rico. In addition, the physician must certify the duration of the medical contraindication and whether it is temporary or permanent. If it is temporary, once the contraindication is not present, the person must comply with the vaccination requirement, as applicable under this Order.

As an exception, declining vaccination for religious purposes is permitted, as long as the vaccine goes against the employee's religious dogma. In order to qualify for this exception, the person must present a sworn statement in which they certify, along with a minister or religious leader of their faith, both of whom shall be under oath and shall make their statement under penalty of perjury, that they cannot be inoculated against COVID-19 due to their religious beliefs. If they do not have a minister or religious leader, they must present a sworn statement in which they establish their religious convictions in a specific manner. If the above criteria are not met, said request must be processed in accordance with what is established in Section 3 of this Executive Order.

An employee that may not be vaccinated due to any of the abovementioned exceptions may work in person at the corresponding facilities, employing adequate safety measures, which include the use of masks, social distancing, and any other measure that may, from time to time, be issued by the Secretary of the Department of Health.

In addition to the above, this person must—while the emergency declared in Administrative Bulletin OE-2020-020 persists—present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces. The employer or a person to whom they have delegated must ensure compliance with the above.



Section 3: EMPLOYEES WHO DECLINE VACCINATION. Any employee of



a restaurant (including fast food restaurants, food courts, and cafeterias), bar, "chinchorro", café, sports bar, theater, cinema, stadium, convention or activity center, and any other establishment—either indoor or outdoor—that sells prepared food or drink who does not present their certificate of immunization (COVID-19 Vaccination Record Card) or a document that verifies that they have completed or initiated the COVID-19 vaccination process, and for whom none of the exemptions apply, must while the emergency declared in Administrative Bulletin OE-2020-020 persists—comply with the following: present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

Should the abovementioned individuals not present their certificate of immunization (COVID-19 Vaccination Record Card), a negative COVID-19 test result on a weekly basis, or a positive COVID-19 result with documentation of their recovery, and should they not qualify for one of the exemptions detailed in this Executive Order, they may not work in person. Therefore, the employer must take the corresponding applicable measures, including allowing them to use applicable regular leaves or an unpaid leave.

Section 4:

REQUIREMENTS FOR VISITORS. In the interest of safeguarding the health of Puerto Rico's population and minimizing infections, I hereby order that, from the moment this Executive Order enters into force, all restaurants (including fast food restaurants, food courts, and cafeterias), bars, "chinchorros", cafés, sports bars, theaters, cinemas, stadiums, convention or activity centers, and any other establishment, either indoor or outdoor, that sells prepared food or drink, must verify that all of their visitors above the age of 12—subject to the exemptions indicated in this section—comply with one of the following conditions:

1. The visitor is properly vaccinated with a vaccine approved by the FDA to address the COVID-19 emergency.





- The visitor presents a negative COVID-19 result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed 72 hours prior to visiting the establishment.
- 3. The visitor presents a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

It shall be the responsibility of each business or commercial entity to request that each visitor—before entering the business—present a certificate of immunization (COVID-19 Vaccination Record Card) or viral test result. For their part, it shall be the visitor's responsibility to present their certificate of immunization (COVID-19 Vaccination Record Card) or viral test result as a condition to access the business. The certificate of immunization or viral test may be presented through any other physical or digital method.

In addition, the private operator must ensure that all visitors comply with administrative orders 2021-508A and 2021-512, issued by the Secretary of the Department of Health, and subsequent orders. In particular, they must comply with mandatory mask usage in indoor spaces.

It is important to point out that what is established in this Executive Order does not limit the authority of any private operator to implement additional restrictions not contemplated herein. That is to say, none of what is established in this Executive Order may be interpreted as private operators not being able to take additional or more restrictive measures.

Individuals under the age of 12 are exempted from complying with the screening established in this section, as they currently cannot be vaccinated. All individuals who are exclusively acquiring food at restaurants (including fast food restaurants, food courts, and cafeterias), bars, "chinchorros", cafés, and sports bars through a drive-through or curbside pickup; that is to say, they won't consume the food at the establishment, are also exempted.

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Section 5:

CAPACITY LIMITATION. All restaurants (including fast food restaurants, food courts, and cafeterias), bars, "chinchorros," cafés, sports bars, theaters, cinemas, stadiums, convention or



activity centers, and any other indoor establishment that sells prepared food or drink that does not comply with the requirements established in Section 4 of this Executive Order shall be obligated to limit their capacity to 50% of the establishment's maximum capacity.

Section 6:

ACCESS RESTRICTION. Visitors may not access an establishment if they refuse to comply with the requirements established in this Executive Order as implemented by its private operator. All citizens are urged to cooperate with private operators in complying with what is established herein. Should any citizen not cooperate and attempt to force a private operator to not comply with the provisions of this Executive Order, they may be subject to what is established in Section 9 of this Order and any other applicable provision of the Puerto Rico Criminal Code.

Section 7:

OVERSIGHT. The corresponding agencies are hereby ordered to oversee faithful compliance with what is established in this Executive Order. The public is also encouraged to inform the authorities of establishments that are not complying with this Order. In order for citizens to be able to contribute to oversight efforts and full compliance with this Executive Order, all establishments are hereby ordered to display posters in visible locations advertising the confidential COVID-19 hotline created by the Department of Health. These posters or signs must include the following contact information in order for citizens to report cases of noncompliance:

- a) Phone: (787) 522-6300, extensions 6899, 6840, 6824, 6833, and 3893
 - b) Email: investigaciones@salud.pr.gov."

It is also hereby required that, should they not comply with the requirements established in this Executive Order, this aforementioned poster or sign must include the number of people who total the establishment's maximum required capacity of 50% based on the current Puerto Rico building code (PR Building Code 0218) authorized by the Puerto Rico Firefighters Corps Bureau; the above is under penalty of noncompliance with this Executive Order.





Citizens are urged to notify the corresponding agencies, including the Department of Health, of any private operator that is not complying with screening requirements or the limitation of an establishment's capacity to 50%, as established in this Executive Order.

Section 8:

GUIDELINES AND REGULATIONS. The provisions established in this executive order may be defined, reinforced, or modified in detail through guidelines issued by any agency called upon to regulate the services discussed herein, including the Department of Health and the Department of Labor and Human Resources. All agencies that issue guidelines in order to describe the provisions of this Executive Order in detail must publish said guidelines immediately and as widely as possible.

Section 9:

NONCOMPLIANCE. Failure to comply with the provisions of this Executive Order by any person or business shall result in the imposition of the criminal penalties and fines defined under the provisions of Article 5.14 of Act 20-2017, as amended, which sets a penalty of imprisonment not to exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties, at the discretion of the court and/or any applicable law. Furthermore, in accordance with the provisions of Art. 33 of the Department of Health Act, "[a]ny natural or juridical person who violates the provisions of this Act or the regulations issued by the Department of Health thereunder shall incur a misdemeanor, and upon conviction, may be sentenced to imprisonment that shall not exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties in the discretion of the court." Any person who fails to comply with the provisions of this Order shall be subject to criminal proceedings, which shall be initiated without any delay by the Public Prosecutor, whom, in turn, must request bail to be set in accordance with the Rules of Criminal Procedure.



Section 10: <u>DEFINITION OF "AGENCY"</u>. For the purposes of this Executive

Order, the term "Agency" refers to any agency, instrumentality, office, or department of the Executive Branch of the Government of Puerto Rico, including public corporations, regardless of its name.

Section 11:

NON-CREATION OF ENFORCEABLE RIGHTS. This Executive Order is not intended to create any rights, substantive or



procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative, against the Government of Puerto Rico or its agencies, officials, employees, or any other person.

Section 12:

SEVERABILITY. The provisions of this Executive Order are separate and independent of each other, and if any part, section, provision, or sentence of this Executive Order is declared unconstitutional, void, or invalid by a court of jurisdiction and venue, such decision shall not affect the validity of the remaining provisions, which shall remain in full force.

Section 13:

PRIOR ORDERS SUPERSEDED. This Executive Order shall, when it enter into force, supersede the parts of any executive order that may, in whole or in part, be inconsistent with the provisions herein, to the extent of such inconsistency.

Section 14:

<u>PUBLICATION</u>. This Executive Order must be filed immediately with the Department of State and the widest possible publication is hereby ordered.

Section 15:

<u>VALIDITY</u>. This Executive Order shall enter into force on August 23, 2021 and shall remain in force until the state of emergency declared in Administrative Bulletin OE-2020-020 has been lifted, or until this Order is amended or annulled by a subsequent Executive Order or by law.



IN TESTIMONY WHEREOF, I hereby issue this Executive Order under my signature and cause the Great Seal of the Government of Puerto Rico to be affixed in San Juan, Puerto Rico, on this 11th day of August of 2021.

PEDRO R. PIERLUISI GOVERNOR

Enacted in accordance with the law on this 11th day of August of 2021.

OMAR J. MARRERO DÍAZ SECRETARY OF STATE



GOVERNMENT OF PUERTO RICO LA FORTALEZA SAN JUAN, PUERTO RICO

Administrative Bulletin Number: OE-2021-064

EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. PEDRO R. PIERLUISI, FOR THE PURPOSES OF IMPLEMENTING MEASURES TO COMBAT COVID-19 AT GYMS, BEAUTY SALONS, BARBER SHOPS, SPAS, CHILD CARE CENTERS, CASINOS, GROCERY STORES, AND CONVENIENCE STORES, AMONG OTHERS.

WHEREAS:

Since March 12, 2020—after the first cases of COVID-19 were recorded on our Island—we have been in a state of emergency to address the pandemic we are currently facing. From that date, countless strategies have been employed to control it. The most recent one was issuing administrative bulletins OE-2021-058, OE-2021-062, and OE-2021-063, in which certain important sectors of the community were required to present a certificate of immunization against said virus, subject to certain exceptions and available alternatives.

WHEREAS:

Currently, the rise in cases continues to accelerate. The data provided by the Puerto Rico Department of Health indicates the daily average for confirmed cases has increased to 331 positive cases. Exactly one week ago, that figure was approximately 288 cases, and a month ago it was 26 cases. These statistics confirm an increase in hospitalizations in recent days, totaling 492 individuals. A week ago, there were 346 hospitalized individuals, a difference of 150 hospitalized individuals in just one week. With regard to intensive care unit, as of today, 108 adults and 2 minors are hospitalized, of which 83 are using ventilators. Statistically, one month ago, the number of adults hospitalized due to COVID-19 only represented 1%. Today, that number is 6%. In the case of intensive care units, there was an increase of 14%. There has been an increase from 2% to 3% in cases involving minors, and intensive pediatric care has increased to 2%. At the same time, the positive rate, which means the percentage of people who received a positive result out of all people tested for the virus, continues to be over 10%, which represents a 6% increase from the previous month.

Not in line with the above, deaths have increased significantly. In the past days, daily average deaths have reached approximately 7 daily cases, a figure not seen since April 2021.





In the United States, the data is either similar or even more concerning than in Puerto Rico. Average weekly cases increased to over 140,000 cases, a number not reached since November 2020, before COVID-19 vaccinations were available. Similarly, hospitalizations are at levels not seen since November 2020. Deaths have reached an average of 800, a figure not seen since May 2021. At a global level, weekly averages total over 600,000 cases and 9,000 deaths. This increase is partly due to the emergence of the *Delta* variant. Said increase is alarming and requires that the Government take new decisive actions to control the spread and protect the lives of all citizens. Therefore, the Government has a responsibility and a pressing and vital interest in protecting the lives of others, requiring that the risk of infection is minimized at activities and places where there is a high potential for exposure to the virus.

WHEREAS:

The increase in the rate of positive results, infections, and hospitalizations in Puerto Rico and in the United States have a common factor that cannot be ignored: individuals not vaccinated against COVID-19. According to data from the Department of Health and official entities in the United States, the vast majority of infected and hospitalized individuals are unvaccinated. This has cause an increase in infections within the community.

WHEREAS:

The scientific data coolected in Puerto Rico shows the great effectiveness of the vaccine. In particular, it has been concluded that only 7.5% of total recorded COVID-19 cases correspond to fully vaccinated individuals. Therefore, the risk of infection for unvaccinated individuals is 6.9 times greater than the risk for those who are vaccinated. As for hospitalizations, only 4.5% of patients are vaccinated individuals. This means that the risk of an unvaccinated individual being hospitalized is 12.2 times greater than the risk for vaccinated individuals. Lastly, regarding deaths, only 2.5% of total deaths related to COVID-19 correspond to fully vaccinated individuals. This indicates that the risk of death for unvaccinated individuals is 25.7 times greater than the risk for vaccinated individuals. This is to say that being vaccinated is at least 3 times better for avoiding infection, 8 times better for avoiding hospitalization, and 16 times better for avoiding death due to COVID-19.

WHEREAS: Scientific evidence shows that the most effective measure for



controlling COVID-19 is vaccination. As it was thoroughly explained in Administrative Bulletin OE-2021-058, the World Health Organization (WHO) has determined that the available vaccines are safe and efficient, and that they prevent people from becoming gravely ill or dying due to SARS-CoV2. Therefore, the WHO recommends vaccination, even for those who have already been infected with COVID-19.

The United States Food and Drug Administration (FDA) has similarly indicated that the 3 COVID-19 vaccines it has authorized for emergency use do work, as they prevent said illness and its severe effects on a person's health, including hospitalization and death. It has also stated that the available information suggests that the authorized vaccines protect against the variants that are currently circulating. Therefore, the FDA—an agency in charge of evaluating and authorizing the vaccines—has promoted vaccination as an effective method for reducing the spread of COVID-19.

Lastly, the Centers for Disease Control and Prevention (CDC) has stated that COVID-19 vaccines are safe and effective, especially for preventing severe cases and death. It has asserted that they can prevent people from becoming infected and spreading the virus. In addition, they help prevent people from becoming severely ill even when they become infected with COVID-19, and they help protect their families and those around them. It also clarified that the vaccines are not experimental, because they have gone through the required stages in the clinical trials. Therefore, it sustains that the safest option for fighting said pandemic is to undergo vaccination for COVID-19.

WHEREAS:

In Puerto Rico, vaccinations are well underway. To date—according to data from the CDC—over 79.9% of people who can be vaccinated have received at least one dose. Approximately 68.9% of people who can be vaccinated are fully vaccinated. This data, along with the few recorded adverse reactions, confirm that COVID-19 vaccinations are safe and efficient.

WHEREAS:

It is important to highlight that, to date, 1,963,906 people in Puerto Rico are fully vaccinated. This means that 61.5% of our island's





total population is fully vaccinated, and that a significant percentage of people have yet to be vaccinated in order to control and combat the pandemic. In addition, the cumulative count of administered doses shows that vaccination has declined in recent days, that is to say, not a lot of people are being vaccinated on a daily basis. Said fact has delayed the goal of achieving so-called "heard immunity," or the point at which the virus cannot spread because the community is protected. Be advised that until said milestone is achieved, Puerto Rico is at risk of suffering the most severe consequences of COVID-19.

WHEREAS:

What is happening in Puerto Rico regarding vaccination is consistent with what is happening in other jurisdictions. At a global level, only slightly over 23.8% of the total population is fully vaccinated, and 31.7% have received a single dose. In the United States, only 51% are fully vaccinated and 60% of the total population has received a single dose. These numbers confirm the need to implement measures in Puerto Rico that guarantee the population's safety in places with high exposure to the virus.

WHEREAS:

Regarding vaccinations in general, as stated in Administrative Bulletin OE-2021-058, the United States Supreme Court has examined the State's authority to regulate its use. In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), mandatory smallpox vaccination was challenged. Addressing the case, the Court determined that the freedom granted by the Constitution of the United States is not an absolute right and is subject to reasonable restrictions that the government believes are necessary to promote the safety, health, peace, good order, and morals of the community.

Not satisfied with that, in *Zucht v. King*, 260 U.S. 174 (1922), the United States Supreme Court upheld a law from the state of Texas that prohibits unvaccinated children from attending school. In its reasoning, it concluded that what was ordered did not establish an arbitrary power, but rather an ample discretion required to address and protect public health.

Therefore, in both cases, the United States Supreme Court upheld the state's authority to reasonable mandate vaccinations.

WHEREAS:

In the case of Puerto Rico, in *Lozada Tirado v. Testigos de Jehová*, 177 DPR 893 (2010), our Supreme Court acknowledged that,





although people have a right to decline a medical treatment, this right is not absolute. Using federal case law as a basis (*Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)), the Court concluded that the State may have certain interests that must be taken into account, such as the protection of third parties. This last one applies when intending to submit citizens to a certain medical treatment during a public health crisis. Thus, it was acknowledged that the State may require certain vaccines in a mandatory capacity when facing the threat of a pandemic. *Id.*, n. 13.

WHEREAS:

Certainly, people have a constitutional right to decline a medical treatment. However, unlike individual treatments that do not affect the health of others, vaccinations are intended to combat a collective enemy, not an individual one. It is for that reason that vaccinations have been considered one of the 20th century's greatest achievements in public health. See Bruesewitz v. Wyeth LLC, 562 U.S. 223, 226 (2011).

WHEREAS:

In the case of COVID-19 vaccines, even though there is no binding case law, as recently as August 2, 2021, the United States Court of Appeals for the Seventh Circuit confirmed the decision of the federal District Court of Indiana. In this case, students and employees were required to be fully vaccinated to attend university in person. In addressing the case, the Court of Appeals decided that, according to *Jacobson v. Massachusetts, supra*, there was no constitutional obstacle to requiring said vaccination. It based its decision on the fact that, unlike *Jacobson*, in Indiana there was more latitude because they allowed certain exemptions and the vaccine was not mandatory for all citizens, instead it was a condition for attending university. This case was taken to the federal Supreme Court, which rejected it. *See Klaasen v. Trustees of Indiana University*, 2021 WL 3281209; *Klaasen et al v. The Trustees of Indiana University*, 2021 WL 3025893.

On the other hand, in *Bridges v. Houston Methodist Hospital*, 2021 WL 2399994, employees of a hospital in Texas were required to be vaccinated against COVID-19. The federal District Court upheld the hospital's actions and the vaccination requirement. It believed that conditioning employment to a vaccine is not a form of coercion and that it may be part of the job's requirements.

WHEREAS:

Consistent with the above, on July 6, 2021, the United States





Department of Justice issued an Opinion through its Office of Legal Counsel (OLC) in which it concluded that federal provisions authorizing the emergency use of COVID-19 vaccines do not prohibit public and private entities from imposing SARS-CoV2 vaccinations as a requirement. That is to say, in their understanding, Section 564 of the *Food, Drug, and Cosmetic Act* (FDCA), 21 USC sec. 360bbb-3, only requires that whoever is going to administer a vaccine to a person inform them of the type of authorization given, the potential benefits and risks, and the option to accept or decline the vaccine, including informing them of the consequences of declining it.

WHEREAS:

Not satisfied with the above, on July 29, 2021, the President of the United States, Joseph R. Biden Jr., required all federal employees and contractors to undergo vaccination or weekly COVID-19 testing. This occurred after the United States Department of Veteran Affairs was the first federal agency to implement a requirement for all healthcare workers to be vaccinated.

Several states and cities have also announced that they will require their employees to be vaccinated. The city of New York was the first to make such an announcement. Mayor Bill de Blasio ordered that, starting on September 13, 2021, all municipal employees must be vaccinated or, as an alternative, must undergo weekly COVID-19 testing. He also required vaccinations for people visiting indoor establishments, such as restaurants, theaters, and gyms. In said state, the Governor ordered that hospital employees be vaccinated by September 6, 2021. In addition, it was ordered that transportation employees must be vaccinated or present a negative COVID-19 test result on a weekly basis.

For its part, the state of California will require vaccinations for all of its public employees or, as an alternative, negative COVID-19 test results starting this month. Similarly, the governor of New Jersey, Phill Murphy, ordered mandatory vaccinations for healthcare employees and employees working at extended care centers and prisons, among others; as an alternative they may undergo weekly COVID-19 testing.

AND STATE OF THE S

WHEREAS:

As recently as August 6, 2021, the Court of First Instance of San Juan issued a Judgment in which it upheld the vaccination requirement at schools in Puerto Rico. In its pertinent parts, it



declared that "the State has an urgent interest in safeguarding public health and taking all necessary measures to effectively combat a pandemic that has affected the lives of every person on this planet and that is simply unprecedented in recent history. Without a doubt, these measures include requiring vaccinations against said disease and the use of masks in indoor spaces where people are close together, such as schools and universities." It also concluded that "because it is our understanding that the executive and administrative orders in question are based on accurate and verifiable scientific data, and that, in addition, they are carefully designed to provide reasonable accommodations for those who qualify and need them, we concluded that they are valid and completely in line with the applicable constitutional parameters."

WHEREAS:

After declaring a state of emergency, Article 5.10 of Act 20-2017, as amended, known as the "Puerto Rico Public Safety Department Act," empowers me, as Governor, to establish any measures deemed necessary for the duration of the emergency in order to manage it with the goal of securing the health, property, and safety of Puerto Rico's residents.

WHEREAS:

Subsection (b) of Article 5.10 of Act 20-2017 establishes that, as Governor of Puerto Rico, I may enact, amend, or repeal any regulation, and to enact, amend, or rescind any order as deemed appropriate to govern during the state of emergency or disaster. The regulations enacted or orders issued during a state of emergency shall have the force of law while said state of emergency persists.

WHEREAS:

The Government of Puerto Rico has a responsibility to make the necessary efforts to prevent and stop the spread of COVID-19 and safeguard the health, lives, and safety of Puerto Rico's residents.

WHEREAS:

The power to govern a community comes with a great responsibility to ensure that its people are safe and healthy. The power of reason of State—as delegated to the Executive Branch by Act 20-2017—empowers the government to take the necessary measures to protect the health and safety of its people. That is to say, it is the State's inherent power which allows for the creation and enactment of regulations in general for the purposes of protecting public health, safety, and wellbeing. In order to secure these benefits for the community, the State has the power to



restrict certain personal interests, which are not absolute.

WHEREAS:

With the specific objective of safeguarding the health of the people of Puerto Rico, clear and decisive action must be taken to ensure that each citizen is healthy. This Government has an urgent and important interest in safeguarding the lives of the people and ensuring to minimize the risk of infection in everyday activities and at places where exposure to the virus is high. A necessary step for achieving these objectives is to implement decisive actions—such as requiring vaccinations or negative COVID-19 test results—at locations where people have direct contact with each other, such as beauty salons, barber shops, aesthetics salons, spas, gyms, and other important businesses, which will prevent infections at these facilities.

WHEREAS:

The COVID-19 pandemic presents a dynamic and changing scenario that requires the Government to redesign its strategies in order to promptly manage infections in the population.

WHEREAS:

In light of the significant rise in infections, I, as Governor, have a responsibility and duty to continue to carefully monitor the daily statistics issued by the Department of Health, and take the necessary measures to safeguard everyone's health. Should these measures not have a significant impact on the increase in infections, I shall be forced to implement additional restrictions.

WHEREAS:

I must emphasize that each citizen has an individual responsibility to exercise good judgment and care in any personal, commercial, or professional activity they are attending or involved in. If every Puerto Rican follows all of the precautionary measures issued by the CDC and the administrative orders issued by the Department of Health concerning COVID-19, there is no doubt that we would all be safer. Therefore, each citizen has a responsibility to continue following the precautionary measures issued by the Secretary, and to use good judgment and not participate in any activity they believe would put their health or the health of others at risk.

THEREFORE:

I, PEDRO R. PIERLUISI, Governor of Puerto Rico, by virtue of the powers inherent to my office and the authority vested in me by the Constitution and the laws of the Government of Puerto Rico, hereby declare and order the following:

Section 1: EMPLOYEE VACCINATION REQUIREMENTS. In order to



minimize infections and successfully safeguarding the health of Puerto Rico's population, I hereby order that once this Executive Order enters into force, beauty salons, barber shops, aesthetics salons, spas, gyms, child care centers, grocery stores, convenience stores (including businesses authorized by the WIC Program), casinos, and gas stations must require and ensure that all employees—regardless of their duties—who work there in person to be fully vaccinated with a vaccine authorized by the FDA to address the COVID-19 emergency. For the purposes of this requirement, it shall be sufficient for the employee to show that they have started the vaccination process with the first dose by the date this Executive Order goes into force, which, to wit, is August 30, 2021. However, the employee must comply with and later present evidence to their employer of having received the second dose, if the type of vaccine they have been administered requires so. They shall have until October 15, 2021 to do so.

It shall be the responsibility of each employer, merchant, owner, administrator, or analogous person—or a person to whom they have delegated—to request employees to present a certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or a document that proves they have completed or initiated their COVID-19 vaccination process. For their part, it shall be the employee or person's responsibility to present their certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or a document that proves they have initiated or completed their COVID-19 vaccination process in order to be permitted to work in person. Certificates of immunization may be substituted with any other physical or digital method authorized for verifying vaccination status.

For the purposes of this Executive Order, the term employee applies to any natural person who works physically or in person—including a business's owner, administrator or analogous person, contractors, but not suppliers—in exchange for a salary, wages, compensation, emolument, or any type of remuneration at one of the abovementioned businesses. For the purposes of the vaccination requirement, as established in this Executive Order, individuals who are providing services in a voluntary and in-person capacity at these establishments shall also be considered





employees.

Section 2:

EMPLOYEE EXEMPTIONS. For the purposes of this Order, individuals whose immune systems are compromised and for whom the COVID-19 vaccine may be detrimental to their health shall be exempted from the vaccination requirement. Similarly, individuals who have other medical contraindications that preclude their inoculation shall be exempted. This must be certified by a physician authorized to practice medicine in Puerto Rico. In addition, the physician must certify the duration of the medical contraindication and whether it is temporary or permanent. If it is temporary, once the contraindication is not present, the person must comply with the vaccination requirement, as applicable under this Order.

As an exception, declining vaccination for religious purposes is permitted, as long as the vaccine goes against the employee's religious dogma. In order to qualify for this exception, the person must present a sworn statement in which they certify, along with a minister or religious leader of their faith, both of whom shall be under oath and shall make their statement under penalty of perjury, that they cannot be vaccinated against COVID-19 due to their religious beliefs. If they do not have a minister or religious leader, they must present a sworn statement in which they establish their religious convictions in a specific manner. If the above criteria are not met, said request must be processed in accordance with what is established in Section 3 of this Executive Order.

An employee that may not be vaccinated due to any of the abovementioned exceptions may work in person at the corresponding facilities, taking adequate safety measures, which include the use of masks, social distancing, and any other measure that may, from time to time, be issued by the Secretary of the Department of Health.

In addition to the above, this person must—while the emergency declared in Administrative Bulletin OE-2020-020 persists—present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed no more than 72 hours prior, or a positive COVID-19



result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces. The employer or a person to whom they have delegated must ensure compliance with the above.

Section 3:

EMPLOYEES WHO DECLINE VACCINATION. Any employee of a beauty salon, barber shop, aesthetics salon, spa, gym, child care center, grocery store, convenience store (including businesses authorized by the WIC program), casino, or gas station who does not present their certificate of immunization (COVID-19 Vaccination Record Card Vacu ID) or a document that verifies that they have completed or initiated the COVID-19 vaccination process, and for whom none of the exemptions apply, must—while the emergency declared in Administrative Bulletin OE-2020-020 persists—comply with the following: present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

Should the abovementioned individuals not present their certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID), a negative COVID-19 test result on a weekly basis, or a positive COVID-19 result with documentation of their recovery, and should they not qualify for one of the exemptions detailed in this Executive Order, they may not work in person. Therefore, the employer must take the corresponding applicable measures, including allowing them to use applicable regular leaves or an unpaid leave.

Section 4:

REQUIREMENTS FOR VISITORS. In the interest of safeguarding the health of Puerto Rico's population and minimizing infections, I hereby order that, from the moment this Executive Order enters into force, all beauty salons, barber shops, aesthetics salons, spas, gyms, and casinos must verify that all of their visitors above the age of 12—subject to the exemptions indicated in this section—comply





with <u>one</u> of the following conditions:

- The visitor is properly vaccinated with a vaccine approved by the FDA to address the COVID-19 emergency.
- 2. The visitor presents a negative COVID-19 result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed 72 hours prior to visiting the establishment.
- 3. The visitor presents a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

It shall be the responsibility of each business or commercial entity to request that each visitor—before entering the business—present a certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or viral test result. For their part, it shall be the visitor's responsibility to present their certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or viral test result as a condition to access the business. The certificate of immunization or viral test may be presented through any other physical or digital method.

In addition, the private operator must ensure that all visitors comply with administrative orders 2021-508A and 2021-512, issued by the Secretary of the Department of Health, and subsequent orders. In particular, they must comply with mandatory mask usage in indoor spaces.

It is important to point out that what is established in this Executive Order does not limit the authority of any private operator to implement additional restrictions not contemplated herein. That is to say, none of what is established in this Executive Order may be interpreted as private operators not being able to take additional or more restrictive measures.

Individuals under the age of 12 are exempted from complying with the screening established in this section, as currently they cannot be vaccinated.

Section 5:

<u>CAPACITY LIMITATION</u>. Any beauty salons, barber shops, aesthetics salons, spas, gyms, or casinos that do not comply with the requirements established in Section 4 of this Executive Order





shall be obligated to limit their capacity to 50% of the establishment's maximum capacity, as established in the building code currently in effect in Puerto Rico (PR Building Code 2018).

Section 6:

ACCESS RESTRICTION. Visitors may not access an establishment if they refuse to comply with the requirements established in this Executive Order as implemented by its private operator. All citizens are urged to cooperate with private operators in complying with what is established herein. Should any citizen not cooperate and attempt to force a private operator to not comply with the provisions of this Executive Order, they may be subject to what is established in Section 9 of this Order and any other applicable provision of the Puerto Rico Criminal Code.

Section 7:

OVERSIGHT. The corresponding agencies are hereby ordered to oversee faithful compliance with what is established in this Executive Order. The public is also encouraged to inform the authorities of establishments that are not complying with this Order. In order for citizens to be able to contribute to oversight efforts and full compliance with this Executive Order, all establishments are hereby ordered to display posters in visible locations advertising the confidential COVID-19 hotline created by the Department of Health. These posters or signs must include the following contact information in order for citizens to report cases of noncompliance:

- a) Phone: (787) 522-6300, extensions 6899, 6840, 6824, 6833, and 3893
- b) Email: investigaciones@salud.pr.gov

It is also hereby required that, should they not comply with the requirements established in this Executive Order, this aforementioned poster or sign must include the number of people who total the establishment's maximum required capacity of 50% based on the current Puerto Rico building code (PR Building Code 0218) authorized by the Puerto Rico Firefighters Corps Bureau; the above is under penalty of noncompliance with this Executive Order.

Citizens are urged to notify the corresponding agencies, including the Department of Health, of any private operator that





is not complying with screening requirements or the limitation of an establishment's capacity to 50%, as established in this Executive Order.

Section 8:

GUIDELINES AND REGULATIONS. The provisions established in this executive order may be defined, reinforced, or modified in detail through guidelines issued by any agency called upon to regulate the services discussed herein, including the Department of Health and the Department of Labor and Human Resources. All agencies that issue guidelines in order to describe the provisions of this Executive Order in detail must publish said guidelines immediately and as widely as possible.

Section 9:

NONCOMPLIANCE. Failure to comply with the provisions of this Executive Order by any person or business shall result in the imposition of the criminal penalties and fines defined under the provisions of Article 5.14 of Act 20-2017, as amended, which sets a penalty of imprisonment not to exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties, at the discretion of the court and/or any applicable law. Furthermore, in accordance with the provisions of Art. 33 of the Department of Health Act, "[a]ny natural or juridical person who violates the provisions of this Act or the regulations issued by the Department of Health thereunder shall incur a misdemeanor, and upon conviction, may be sentenced to imprisonment that shall not exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties in the discretion of the court." Any person who fails to comply with the provisions of this Order shall be subject to criminal proceedings, which shall be initiated without any delay by the Public Prosecutor, whom, in turn, must request bail to be set in accordance with the Rules of Criminal Procedure.

Section 10:

DEFINITION OF "AGENCY". For the purposes of this Executive Order, the term "agency" refers to any agency, instrumentality, office, or department of the Executive Branch of the Government of Puerto Rico, including public corporations, regardless of its name.

Section 11:

NON-CREATION OF ENFORCEABLE RIGHTS. This Executive Order is not intended to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative, against the





Government of Puerto Rico or its agencies, officials, employees, or any other person.

Section 12:

SEVERABILITY. The provisions of this Executive Order are separate and independent of each other, and if any part, section, provision, or sentence of this Executive Order is declared unconstitutional, void, or invalid by a court of jurisdiction and venue, such decision shall not affect the validity of the remaining provisions, which shall remain in full force.

Section 13:

PRIOR ORDERS SUPERSEDED. This Executive Order shall, when it enter into force, supersede the parts of any executive order that may, in whole or in part, be inconsistent with the provisions herein, to the extent of such inconsistency.

Section 14:

<u>PUBLICATION</u>. This Executive Order must be filed immediately with the Department of State and the widest possible publication is hereby ordered.

Section 15:

VALIDITY. This Executive Order shall enter into force on August 30, 2021 and shall remain in force until the state of emergency declared in Administrative Bulletin OE-2020-020 has been lifted, or until this Order is amended or annulled by a subsequent Executive Order or by law.





IN TESTIMONY WHEREOF, I hereby issue this Executive Order under my signature and cause the Great Seal of the Government of Puerto Rico to be affixed, at La Fortaleza, in San Juan, Puerto Rico, on this 19^h day of August of 2021.

PEDRO R. PIERLUISI GOVERNOR

Enacted in accordance with the law on this 19th day of August of 2021.

OMAR J/MARRERO DÍAZ

SECRETARY OF STATE

Case 3:21-cv-014 21 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the civil d	ocket sheet. (SEE INSTRUC	TIONS ON NEXT PAGE C	OF THIS FORM.)											
I. (a) PLAINTIFFS	·		DEFENDA	NTS										
TROPICAL CHILL CORP.; ALEXANDRA IRIZZARY; YASMIN VEGA; AND RENE MATOS, (b) County of Residence of First Listed Plaintiff Guaynabo			Hon. Pedro R. Pierluisi Urrutia, in his capacity as governor; Hon. Carlos R. Mellado López, in his capacity as secretary											
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- **I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- **III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.
- V. Origin. Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date. Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

- VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Case 3:21-cv-01411 Document 1-8 Filed 08/27/21 Page 1 of 1

UNITED STATES DISTRICT COURT DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint ith this Category Sheet and the Civil Cover Sheet (JS-44).

Attorne	y Name (Last, First	t, MI): Davila-Avecedo, Jose R
USDC-	PR Bar Number:	231511
Email Address:		jose@bdlawpr.com
1.	Title (caption) of t	he Case (provide only the names of the <u>first</u> party on <u>each</u> side):
	Plaintiff:	Tropical Chill Corp.
	Defendant:	Hon. Pedro R. Pierluisi Urrutia
2.	Indicate the categor	bry to which this case belongs:
	Ordinary Civi Social Securit	
	Banking	
	Injunction	
3.	Indicate the title ar	nd number of related cases (if any).
4.	Has a prior action	between the same parties and based on the same claim ever been filed before this Court
	Yes	
	X No	
5.	Is this case require	ed to be heard and determined by a district court of three judges pursuant to 28 U.S.C. 2284
	Yes	
	X No	
6.	Does this case que	stion the constitutionality of a state statute (See, Fed.R.Civ. P. 24)
	X Yes	
	☐ No	
Date Su	bmitted: 8/27/	2021

rev. Dec. 2009

Print Form

Reset Form

UNITED STATES DISTRICT COURT

for the

District of Puerto Rico

TROPICAL CHILL CORP.; ALEXANDRA IRIZZARY; YASMIN VEGA; AND RENE MATOS,)))						
Plaintiff(s))						
V.	Civil Action No. 21-1411						
HON. PEDRO R. PIERLUISI URRUTIA, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO, HON. CARLOS R. MELLADO LÓPEZ, IN HIS OFFICIAL C))))						
Defendant(s)							
SUMMONS IN	SUMMONS IN A CIVIL ACTION						
To: (Defendant's name and address) HON. PEDRO R. PIERLUISI URRUTIA PO Box 9020192 San Juan PR 00902-0192							
A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: José R. Dávila Acevedo 1519 Ponce de León Ave. Ste. 501 San Juan PR 00909							
If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.							
	CLERK OF COURT						
Date							
Date:	Signature of Clerk or Deputy Clerk						

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 21-1411

PROOF OF SERVICE

(is section s ould not e iled it t e court unless re uired y ed iv (l

	This summons for (n	ame of individual and title, if a	ny)					
was re	ceived by me on (date)		·					
	☐ I personally serve	☐ I personally served the summons on the individual at (place)						
			on (date)	or				
	☐ I left the summon	ence or usual place of abode with (name)						
	, a person of suitable age and discretion who resides							
	on (date)	, and mailed a	copy to the individual's last known address or					
	☐ I served the sumn	I served the summons on (name of individual)			ho is			
	designated by law to	o accept service of process	s on behalf of (name of organization)					
		on (date)						
	☐ I returned the summons unexecuted because							
	☐ Other (specify):							
	My fees are	for travel and	for services, for a total of	0.00				
	I declare under penalty of perjury that this information is true.							
Date:								
			Server's signature					
		-	Printed name and title					
		-	Server's address					

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Puerto Rico

TROPICAL CHILL CORP.; ALEXANDRA IRIZZARY; YASMIN VEGA; AND RENE MATOS,)))						
Plaintiff(s))						
v.	Civil Action No. 21-1411						
HON. PEDRO R. PIERLUISI URRUTIA, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO, HON. CARLOS R. MELLADO LÓPEZ, IN HIS OFFICIAL C))))						
Defendant(s)	,)						
SUMMONS IN	SUMMONS IN A CIVIL ACTION						
To: (Defendant's name and address) Carlos R. Mellado López							
Centro Médico Norte Calle Periferial Interior, Bo. Monacillos Rio Piedra:	s, PR						
A lawsuit has been filed against you.							
are the United States or a United States agency, or an office							
If you fail to respond, judgment by default will be You also must file your answer or motion with the court.	entered against you for the relief demanded in the complaint.						
	CLERK OF COURT						
Data							
Date:	Signature of Clerk or Deputy Clerk						

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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	This summons for (no	ame of individual and title, if an	y)			
was re	ceived by me on (date)		·			
	☐ I personally served the summons on the individual at (place)					
			on (date)	or		
	☐ I left the summon					
	on (date), a person of suitable age and discretion who resides there, on (date), and mailed a copy to the individual's last known address or					
	☐ I served the summons on (name of individual)				ho is	
	designated by law to	accept service of process	on behalf of (name of organization)			
		on (date)				
	☐ I returned the summons unexecuted because				or	
	☐ Other (specify):					
	My fees are	for travel and	for services, for a total of	0.00		
	I declare under penal					
Date:		_				
			Server's signature			
			Printed name and title			
		_	Server's address			

Additional information regarding attempted service, etc: