
MEMORANDUM

TO: KEN PAIGE, CHAD PAIGE, ROBIN & LISA BUCKMAN AND OTHER INTERESTED BUSINESSES

FROM: STEVEN BAILEY, PARTNER, BAILEY & ROMERO

SUBJECT: LITIGATION TO REOPEN

DATE: AUGUST 10, 2020

CC: MARTHA ROMERO, GARY KREEP, ROBERT WILLIAMS, ROBROY FAWCETT, FILE

The purpose of this memorandum is to suggest a course of action to reopen restaurants in Nevada county and in other areas of the state of California where Coronavirus has had little or minimum effect. The suit would be filed in late September or early October to coincide with the change of weather in Northern California.

This memorandum is for the benefits of the named recipients. The contents of this memorandum are intended only for use by the individuals or entities to which it is addressed and contains information that is legally privileged, confidential, and exempt from disclosure. If you are not an intended recipient, you are hereby notified that any dissemination, distribution, or copying of this information is strictly prohibited.

The specific intent of this action is to modify the “one size fits all” approach that has been displayed by the Sacramento establishment. Sacramento has treated the smaller, less impacted rural counties disproportionately harsh, closing the rural counties and allowing counties such as Orange and San Diego to continue to operate their businesses, particularly their restaurants.

Nevada county population is approximately 99.7% virus free after 6 months of lockdown, opening and then lockdown again. Even while other counties in the state experienced spikes in coronavirus infections, Nevada county has not experienced an infection spike. To date the county has experienced 1 death. As of the preparation of this memorandum, there is one individual hospitalized in Nevada county because of the virus.

The need is great for a legal solution. Restaurants will not survive the snow and rain months if relief is not forthcoming. For that is the reason we propose taking legal action.

The case will proceed as outlined:

Plaintiffs:

The lead plaintiffs would be Friar Tucks Restaurant & Bar in Nevada City and Old Town Café in Grass Valley. They would be supplemented with 20-25 other restaurants in Nevada county and other restaurants and business in low impacted area.

Other entities can be involved in supporting the effort as successful litigation will force the Governor, the California Department of Health and the counties that are not impacted by the Coronavirus to relax their draconian restrictions.

The rationale for having 20-25 additional businesses joining the lawsuit as an organization is that the court will take the matter more seriously if numerous businesses claim to be impacted. Just 2 business does not establish the same urgency.

Venue:

This case would be filed in the Eastern District of California in Sacramento. Nevada county is part of this federal judicial district and therefore venue is proper in this district.

Potential Causes of Action:

1. Equal Protection (14th Amendment to the United States Constitution)
(Art. 1, Sec. 7- Constitution of the State of California)
2. Commerce Clause (Art. 1, Section 8, clause §3- United States Constitution)
3. Substantive Due Process (14th Amendment to the United States Constitution)
4. Procedural Due Process (14th Amendment to the United States Constitution)
5. Right to Travel (Privileges & Immunities clause-14th Amendment to the United States Constitution)
6. Violation of Civil Rights (42 USC 1983)
7. Failure of the California Legislature to act. (Art.4, Sec. §8- Constitution of the State of California)
8. Declaratory relief
9. Injunctive relief

Each of these potential causes of action still require research to determine the current state of the caselaw, including how the respective federal courts have been handling these issues during the pandemic.

Federal Courts in California have been less sympathetic than courts in other jurisdictions to some of these causes of action. We will cite cases from other federal judicial districts if those cases are similar and are successful.

Timing of the filing:

The case would be timed for filing just before the weather in Nevada county changes. We would be looking for a time when rain and snow are predicted to give urgency to the court to act on the accompanying request for injunctive relief.

Preliminary relief:

Upon filing, a request for ex-parte relief would be made in the Eastern District of California. This motion is for extraordinary relief and depends on “the balancing of the equities.” Generally, what is required is 1) a showing of the likelihood of prevailing on the merits, and 2) irreparable harm to the moving party if the request is not granted.

Based on when we file, showing irreparable harm will not be the major issue. With the weather changing, we should be able to establish that complete closure will occur causing the restaurants to go out of business if the injunction is not granted.

The problem will be showing that we can prevail on the merits. Each cause of action has specific elements to have to be proven by a preponderance of the evidence at trial. Because the requirement is high when it comes to prevailing on the merits, courts are more likely to deny the motion and maintain the “status quo.” It is possible that the court would deny the motion but set an expedited trial schedule as a way of balancing harm.

Remedies:

The plaintiffs will seek the following remedies in this case.

Injunctive relief seeking a preliminary injunction allowing the reopening of the restaurants to in-dining immediately with appropriate social distancing/ facemasks, etc. It will be suggested that appropriate indoor air treatment (ionization and ultra-violet air treatment) would be a suitable alternative to masks and social distancing.

Declaratory relief modifying the definition of a state of emergency is applied to coronavirus. An emergency must mean a localized emergency where science suggests strongly that the health system will be overwhelmed by the infections requiring hospitalization of those infected.

Where the science does not suggest a significant impact locally from the virus an emergency should not be permitted by the court.

Damages for the “out of pocket” costs incurred in the lockdown. General damages in an amount sufficient to cover all other “suffering” caused by the unscientific lockdown.

Attorney’s fees and court costs reasonably incurred by the plaintiffs.

Such other relief as the court deems appropriate.

Costs:

Partners participate by joining the coalition therefore the lawsuit by committing \$5,000 in donations to the 501 (c)(3) foundation described below. \$1,000 paid by the partner to join and the balance raised by stakeholders or partners donation.

The first donation would be made immediately upon joining the coalition / lawsuit. The partner reaches out to their stakeholders/customers for the \$4,000 balance over the next 3 months. The partner agrees that if the remaining \$4,000 is not raised in 3 months by their stakeholders / customers they will donate the balance. The final contribution would be made 3 months after the case is filed.

All contributions would be made to the CALIFORNIA CONSTITUTIONAL RIGHTS FOUNDATION a dba of POLL WATCHERS, a 501 (c)(3) Wyoming corporation. The CALIFORNIA CONSTITUTIONAL RIGHTS FOUNDATION will handle all legal funding.

Work will begin at the time \$10,000 has been contributed to the Foundation and a minimum of 20 businesses have signed on to the effort. Contributions can be in the form of cash, checks or credit card payments thru the website <https://ncrcoalition.com/>.

Any funds raised above the committed \$5,000 will remain in the foundation to be used to further our cause legally and enhance our restaurants growth.