

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:	)	Bankruptcy No. 20-22889-JAD
)	
THE CRACKED EGG, LLC,	)	Chapter 11
)	
Debtor,	)	Related to Document Nos. 62 and 69
<hr/>)	
)	
COUNTY OF ALLEGHENY, a political)	
subdivision of the Commonwealth of)	
Pennsylvania,)	
)	
Respondent,)	
)	
v.)	
)	
THE CRACKED EGG, LLC,)	
)	
Movant.)	

RESPONSE TO EXPEDITED MOTION FOR STAY PENDING APPEAL

Respondent, County of Allegheny, through the Allegheny County Health Department (“ACHD” or “Department”), by and through its undersigned counsel, hereby files its Response to Expedited Motion for Stay Pending Appeal. In support of this Response, the Department hereby incorporates by reference as if fully set forth herein the averments and exhibits contained in the Department’s Complaint in Civil Action - Equity (the “Complaint” and which has been attached hereto as Exhibit “A”).

I. PROCEDURAL BACKGROUND

1. On September 16, 2020, ACHD filed the Complaint and Emergency Motion for Preliminary Injunction against Debtor The Cracked Egg, LLC (hereinafter “Cracked Egg”) in the Court of Common Pleas of Allegheny County (hereinafter “State Court”) at Docket No. GD-20-

9809.

2. On September 18, 2020, Cracked Egg removed the Complaint from State Court to the U.S. District Court for the Western District of Pennsylvania (hereinafter “District Court”).

3. On September 22, 2020, State Court held that since Docket No. GD-20-9809 had been removed to District Court, State Court had no jurisdiction to proceed unless and until the case is remanded.

4. On October 7, 2020, District Court denied removal and remanded the case to State Court because it lacked subject matter jurisdiction.

5. On October 9, 2020, Cracked Egg filed a Suggestion of Chapter 11 Bankruptcy.

6. On October 15, 2020, Cracked Egg removed the proceeding from State Court to the U.S. Bankruptcy Court for the Western District of Pennsylvania (hereinafter “Bankruptcy Court”) at Adversary No. 20-02166-JAD.

7. On December 11, 2020 ACHD filed a Motion for Relief from Automatic Stay before this Court.

8. On December 18, 2020, ACHD filed a Motion for Remand before this Court.

9. On January 7, 2021, upon oral arguments and written responses by Cracked Egg, this Court granted the Motion for Relief from Automatic Stay and permitted the civil action by ACHD against Cracked Egg to proceed. Order of Court and Opinion attached herein at Exhibits “B” and “C”, respectively.

10. On January 7, 2021, upon oral arguments and written responses by Cracked Egg, this Court granted the Motion for Remand of the civil action by ACHD against Cracked Egg to State Court.

11. On January 11, 2021, State Court scheduled oral arguments to take place on January

22, 2021 at 1:00pm on the Emergency Motion for Preliminary Injunction and a hearing to take place from January 27, 2021 – January 29, 2021 on the underlying Complaint.

12. On January 14, 2021, Cracked Egg filed its revised Notice of Appeal and appealed this Court’s January 7, 2021 order granting the Motion for Relief from Automatic Stay.

13. On January 14, 2021, Cracked Egg filed its Expedited Motion for Stay Pending Appeal before this Court.

II. FACTUAL BACKGROUND

14. The averments set forth in Paragraphs 1-13 are incorporated by reference as though fully set forth below.

15. Respondent is the County of Allegheny, a home rule county and political subdivision of the Commonwealth of Pennsylvania, acting by and through ACHD, a local health department organized under the Local Health Administration Law, 16 P.S. §§ 12001-12029, (hereinafter “LHAL”) whose powers and duties include the enforcement of laws relating to public health and food and environmental safety within Allegheny County.

16. Upon information and belief, Debtor The Cracked Egg, LLC operates a food facility, The Crack’d Egg, at 4131 Brownsville Road, Pittsburgh, PA 15227 (lot and block number 0188-N-00133).

17. The Crack’d Egg operates from property owned by Tri-River Associates II, LLC.

18. The LHAL requires that whenever ACHD’s Director finds a nuisance detrimental to the public health, the Director must order that that nuisance be abated. 16 P.S. § 12012(d).

19. The LHAL also directs ACHD to execute “the rules and regulations of the State Department of Health and other departments, boards, or commissions of the State government.” 16 P.S. § 12010(a).

20. Pursuant to the Pennsylvania Disease Prevention and Control Law of 1955 (hereinafter “DPCL”), ACHD has primary responsibility for the prevention and control of communicable and non-communicable diseases in Allegheny County. 35 P.S. § 521.3(a).

21. Section 5 of the DPCL states, “Upon the receipt by a local board or department of health or by the department, as the case may be, of a report of a disease which is subject to isolation, quarantine, or any other control measure, the local board or department of health or the department shall carry out the appropriate control measures in such a manner and in such a place as is provided by rule or regulation.” 35 P.S. § 521.5.

22. The DPCL authorizes the State Advisory Health Board to promulgate rules and regulations concerning “...the communicable diseases which are to be subject to isolation, quarantine, or other control measures...” 35 P.S. § 521.16(a)(3).

23. ACHD is a “local health authority” as that term is defined by State Advisory Health Board promulgated regulations. *See* 28 Pa. Code § 27.1.

24. As a county department of health organized under the LHAL, ACHD is a “local morbidity reporting office” or “LMRO”, as that term is defined by the State Advisory Health Board at 28 Pa. Code § 27.1.

25. The State Advisory Health Board has issued a regulation regarding communicable disease control measures which states:

a. The Department or local health authority shall direct isolation of a person or an animal with a communicable disease or infection; surveillance, segregation, quarantine or modified quarantine of contacts of a person or an animal with a communicable disease or infection; and any other disease control measure the Department or the local health authority considers to be appropriate for the surveillance of disease, when the disease control measure is necessary to protect the public from the spread of infectious agents.

b. The Department and local health authority will determine the appropriate disease control measure based upon the disease or infection, the patient's

circumstances, the type of facility available and any other available information relating to the patient and the disease or infection.

c. If a local health authority is not an LMRO, it shall consult with and receive approval from the Department prior to taking any disease control measure.

28 Pa. Code § 27.60.

26. The novel coronavirus 2019 (hereinafter “COVID-19”) is a highly infectious, communicable disease caused by a new coronavirus not previously seen in humans. It is a respiratory disease with symptoms including fever, cough, shortness of breath, and difficulty breathing.

27. On March 6, 2020, Pennsylvania Governor Tom Wolf, finding that threat from COVID-19 constitutes a threat of imminent disaster to the health of the citizens of the Commonwealth, made a statewide disaster declaration concerning the COVID-19 pandemic.

28. On March 12, 2020, Allegheny County made a county-wide emergency declaration due to the COVID-19 pandemic according to the ratification by county council.

29. On July 1, 2020, Commonwealth of Pennsylvania issued an *Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings* which required the use of face coverings at indoor locations where the public is generally admitted and while engaged in work, including at restaurants (hereinafter “Universal Face Coverings Order”).

30. On July 15, 2020, Commonwealth of Pennsylvania issued an *Order of the Secretary of the Pennsylvania Department of Health Directing Mitigation Measures* which required restaurants to limit occupancy to 25% of stated fire code maximum occupancy for indoor dining and to limit occupancy at discrete indoor events or gatherings to 25 persons; include restaurant staff in occupancy limit; and employ social distancing, masking, and other mitigation measures to protect workers and patrons (hereinafter “Mitigation Order”) (the Universal Face Coverings Order

and the Mitigation Order shall hereinafter collectively be referred to as “COVID-19 Control Measure Orders”).

31. Section 7 of the Mitigation Order states as follows:

Enforcement of this Order will begin on the effective date. All Commonwealth agencies involved in the licensing or inspection of any of the above-described facilities are directed to increase their enforcement efforts to ensure compliance with these critical mitigation measures. All local officials currently involved or able to be involved in the Commonwealth’s enforcement efforts are called upon to enforce these critical mitigation measures.

32. On June 19, 2020, ACHD received the first of many complaints from the public regarding The Crack’d Egg’s failure to comply with COVID-19 control measures issued by the Commonwealth of Pennsylvania.

33. On July 1, 2020, ACHD representatives inspected The Crack’d Egg and observed public-facing employees and patrons not wearing face masks.

34. On July 28, 2020, ACHD representatives re-inspected The Crack’d Egg and observed employees and patrons not wearing face masks.

35. On August 5, 2020, ACHD representatives re-inspected The Crack’d Egg and observed food safety violations of ACHD Rules and Regulations Article III, “Food Safety”, (hereinafter “Article III”) and COVID-19 violations, including public-facing employees working without wearing face masks, patrons admitted into facility without face masks, permitting the use of a bar area, and failure to sufficiently space apart outdoors seats.

36. On August 7, 2020, ACHD representatives re-inspected The Crack’d Egg and observed food safety violations of Article III and continuing COVID-19 violations, including public-facing employees working without wearing face masks, patrons admitted into facility without face masks, and failure to sufficiently space apart outdoor seats.

37. On August 11, 2020, ACHD representatives re-inspected The Crack’d Egg and

observed public-facing employees working without wearing face masks and a patron admitted into the facility without a face mask.

38. Due to the imminent danger to public health caused by continued non-compliance with the Governor's orders regarding COVID-19 control measures, on August 11, 2020, ACHD immediately suspended The Crack'd Egg's permit to operate and ordered the facility to close (hereinafter "August 11th Closure Order").

39. In violation of this suspension, The Crack'd Egg has continued to operate, conceal its closure sign, and remove the closure sign, as observed by ACHD representatives on August 24, 2020 through August 28, 2020, inclusive, August 31, 2020 through September 4, 2020, inclusive, and September 10, 2020.

40. Upon information and belief, Debtor The Cracked Egg, LLC has deliberately continued operations in direct violation and contravention of the August 11th Closure Order.

41. At the time of the Chapter 11 filing, Debtor was the subject of various investigations and proceedings instituted by ACHD.

III. ARGUMENT

42. The averments set forth in Paragraphs 1-41 are incorporated by reference as though fully set forth below.

43. Pursuant to Subsection (a) of Rule 8007 of the Federal Rules of Bankruptcy Procedure, a party may move for a stay of a judgment or order of the bankruptcy court pending appeal.

44. In determining whether to grant a stay pending appeal, courts consider the following four factors:

(1) whether the appellant has made a strong showing of the likelihood of success

on the merits; (2) will the appellant suffer irreparable injury absent a stay; (3) would a stay substantially harm other parties with an interest in the litigation; and (4) whether a stay is in the public interest.

In re Revel AC, Inc., 802 F.3d 558, 568 (3d Cir. 2015).

45. The most important part of the analysis is the first factor, whether the movant has made a strong showing of the likelihood of success on the merits. *Id.* at 568.

46. The Third Circuit declared that “a sufficient degree of success for a strong showing exists if there is ‘a reasonable chance, or probability, of winning.’” *In re Revel AC, Inc.*, 802 F.3d at 568-69 quoting *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir.2011).

47. After the first two factors are satisfied, the courts “weigh the likely harm to the movant (absent a stay) (factor two) against the likely irreparable harm to the stay opponent(s) if the stay is granted (factor three). This is called the balancing of harms or balancing of equities. We also take into account where the public interest lies (factor four).” *In re Revel AC, Inc.*, 802 F.3d at 569.

48. The less likely the movant is to win on the merits of the case, the more heavily the balance of harms must weigh in its favor. *Id.* at 570. If “the merits, balance of harms, and public interest favor the stay opponent—a stay should be denied.” *Id.* at 569.

A. Cracked Egg has not made a strong showing of the likelihood of success on the merits.

49. Cracked Egg contends that the COVID-19 Control Measure Orders are unconstitutional.

50. To support its claim, Cracked Egg relies on a case that does *not* even address the face covering order, which was in effect during the time of that Court’s adjudication. *County of Butler v. Wolf*, No. 2:20-CV-677, 2020 WL 5510690 (W.D. Pa. Sept. 14, 2020). Moreover, the

Court in *Wolf* expressed support in *dicta* for the order reducing occupancy based on percentage of fire code maximum occupancy. Beyond making a conclusory statement, Cracked Egg does not point to any language in the Court's decision that has any relevance to the present matter. In this case, the Department issued the August 11th Closure Order for failure to wear face coverings. Since the Court in *Wolf* did not address the constitutionality of a face covering order, the Court's opinion of its validity cannot be presumed.

51. On the other hand, the U.S. District Court for the Middle District of Pennsylvania issued a decision on December 23, 2020 in *M. Rae, Inc. v. Wolf* that is directly relevant to the merits of the Complaint in the present matter. *M. Rae, Inc. v. Wolf*, No. 1:20-CV-2366, 2020 WL 7642596 (M.D. Pa. Dec. 23, 2020). The Court in *M. Rae, Inc.* acknowledged that “[s]ince September, the nation has again experienced an alarming spike in COVID-19 cases and hospitalizations... and the Commonwealth [] saw record-breaking spikes in daily case numbers throughout the fall.” *Id.* at 6.

52. After having reviewed judicial history, the Court in *M. Rae, Inc.* determined that the analysis regarding the constitutionality of public health orders by the United States Supreme Court in *Jacobson v. Massachusetts* “is controlling precedent until the Supreme Court or Third Circuit Court of Appeals tell us otherwise.” *Id.* at 14. *See also Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

53. The Court in *Jacobson* held that “the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulation, as the safety of the general public may demand.” *Jacobson*, 197 U.S. at 29. The Court determined that a measure “enacted to protect the public health, the public morals, or the public safety” will be subject to judicial review only if it “has no real or

substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of the rights secured by the fundamental law.” *Id.* at 31. Thus, the Court in *M. Rae, Inc.* concluded that the rational basis standard of review should apply. *M. Rae, Inc.*, No. 1:20-CV-2366 at 14-15, n. 25.

54. The rational basis test requires a showing by the movant that they have been “intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). This test is “very deferential” and “‘is met if there is any reasonably conceivable state of facts that could provide a rational basis’ for the differing treatment.” *Newark Cab Ass’n v. City of Newark*, 901 F.3d 146, 156 (3d Cir. 2018) (quoting *United States v. Walker*, 473 F.3d 71, 77 (3d Cir. 2007) (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993))). “Mathematical precision is simply not required” to prove rational basis. *M. Rae, Inc.*, No. 1:20-CV-2366 at 19.

55. “[C]ourts are compelled under rational-basis review to accept a legislature’s generalizations even when there is an imperfect fit between means and end.” *Heller*, 509 U.S. at 321.

56. As the Court in *M. Rae, Inc.* correctly acknowledged, “it is an unfortunate reality during this unprecedented global pandemic that there are no perfect choices; so ‘imperfect,’ if properly justified, must suffice.” *M. Rae, Inc.*, No. 1:20-CV-2366 at 20. “It cannot genuinely be disputed that COVID-19 cases are surging and pushing the Commonwealth’s healthcare system to the brink.” *Id.* at 16.

57. COVID-19 is “transmitted predominantly by respiratory droplets generated when people cough, sneeze, sing, talk, or breathe.” *See* Scientific Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2, CDC (updated Nov. 20, 2020),

<https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>.

58. The scientific community has overwhelmingly acknowledged that wearing face coverings helps to reduce transmission of respiratory droplets. *Id.*, see also Coronavirus Disease (COVID-19): Masks, WORLD HEALTH ORG. (Dec. 1, 2020), <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-masks>.

59. The Centers for Disease Control and Prevention (hereinafter “CDC”) warns that “[i]ndoor venues, where distancing is not maintained and consistent use of face masks is not possible (e.g., restaurant dining), have been identified as particularly high-risk scenarios.” See Margaret A. Honein, PhD, et al., Morbidity and Mortality Weekly Report (MMWR): Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths, CDC (Dec. 4, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6949e2.htm>.

60. The CDC categorizes indoor dining as high risk even with reduced capacity and tables spaced six feet apart. See Restaurants and Bars, CDC (updated Dec. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>.

61. The U.S. Supreme Court stated that the “Constitution principally entrusts ‘[t]he health and safety of the people’ to the politically accountable officials of the States ‘to guard and protect’ . . . and [w]hen those officials ‘undertake[] to act in areas fraught with medical and scientific uncertainties,’ their latitude ‘must be especially broad.’” *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (mem.) (Roberts, C.J., concurring) (quoting *Jacobson*, 197 U.S. at 38; *Marshall v. United States*, 414 U.S. 417, 427 (1974)).

62. Furthermore, “[i]t is for the Commonwealth’s public officials—not this or any

court—to determine the most appropriate means by which to meet the current crisis.” *M. Rae, Inc.*, No. 1:20-CV-2366 at 20.

63. After reviewing the scientific evidence, the Court in *M. Rae, Inc.* held that “[it has] little difficulty concluding that defendants’ decision to enact temporary mitigation measures targeted at indoor-dining establishments was eminently rational” and it was “Governor Wolf’s and Secretary Levine’s prerogative and duty to act.” *M. Rae, Inc.*, No. 1:20-CV-2366 at 18-19.

64. Thus, even if Cracked Egg does not think it is “right”, it is rational to require face coverings and reduce capacity in restaurants.

65. Cracked Egg has not demonstrated that it is likely to succeed on the merits, therefore, the expedited motion for stay pending appeal must be denied.

B. The balance of harm weighs in favor of denying a stay.

66. In further support, the following analysis will show that the balance of harm weighs in favor of denying the stay pending appeal.

i. Cracked Egg will not suffer irreparable injury absent a stay.

67. Cracked Egg claims that it will suffer irreparable injury if the case is not stayed pending appeal because the Department intends to shut it down. Cracked Egg implies that by denying its Expedited Motion for Stay Pending Appeal, it will suffer *economic* harm.

68. Cracked Egg must “demonstrate that irreparable injury is likely [not merely possible] in the absence of [a] [stay].” *In re Revel AC, Inc.*, 802 F.3d at 569 *quoting Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008). “Likely” means “more apt to occur than not.” *In re Revel AC, Inc.*, 802 F.3d at 569.

69. Moreover, “purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement.” *In re Revel AC, Inc.*, 802 F.3d at 572 *quoting Minard Run Oil*

Co. v. U.S. Forest Serv., 670 F.3d 236, 255 (3d Cir.2011).

70. The Department is not attempting to “shut down” Cracked Egg, but attempting to require that it operate within the parameters of current COVID-19 control measure orders in order to protect the public health. “These may not be [the Cracked Egg’s] preferred or most profitable means of doing business, but they can still do business.” *M. Rae, Inc.*, No. 1:20-CV-2366 at 23-24.

71. Cracked Egg’s fear of economic harm is the *only* basis of its irreparable injury claim.

72. Thus, Cracked Egg has not shown that it is more likely than not to suffer irreparable injury in the absence of stay.

ii. A stay will substantially harm the ACHD.

73. One of the purposes of the ACHD is to regulate food operations in restaurants and eating establishments in order to “promote the underlying purpose of protecting the public health.” *See* Article III § 300.

74. ACHD, as a public health agency, is tasked to enforce orders, laws and regulations for the promotion of public health.

75. Granting a stay would substantially harm the ACHD because it would prevent the ACHD from performing its duties, to the detriment of public health, and it would permit the continued operation of Cracked Egg without a valid health permit and in violation of COVID-19 mitigation measure orders.

76. Therefore, the balance of harm weighs in favor of denying the stay.

C. A stay is not in the public interest because it will harm public health.

77. As for factor four, the public interest is clearly present, as analyzed in paragraphs 57-60, since the risk of exposure to COVID-19 in indoor dining without face masks, reduced capacity, and social distancing is high due to characteristics of the virus.

78. Thus, granting Cracked Egg's stay, thereby allowing it to continue to operate without COVID-19 mitigation measures in place, is not in the public interest to promote and protect public health.

IV. CONCLUSION

WHEREFORE, Respondent County of Allegheny, through the Allegheny County Health Department, herein moves this Honorable Court to issue an order, in the form herein attached, denying Cracked Egg's Expedited Motion for Stay Pending Appeal.

Date: January 18, 2021

By: /s/ Vijyalakshmi Patel
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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COUNTY OF ALLEGHENY, a political subdivision of the Commonwealth of Pennsylvania,

CIVIL DIVISION – EQUITY

Plaintiff,

No. GD-20-9809

vs.

COMPLAINT IN CIVIL ACTION - EQUITY

THE CRACKED EGG, LLC,

Code 020

Defendant.

Filed on behalf of Plaintiff

Certificate of Location

Counsel of Record for Plaintiff:

This Equity Complaint affects a tract of real property located at 4131 Brownsville Road, Brentwood, Allegheny County, Pennsylvania, designated as Parcel I.D. No. 0188-N-00133 in the Real Estate Office of Allegheny County.

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Allegheny County Health Department

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DEPT OF COMMON RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

FILED

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COUNTY OF ALLEGHENY, a political)	
subdivision of the Commonwealth of	)	CIVIL DIVISION – EQUITY
Pennsylvania,)	
)	
Plaintiff,	)	No.: GD-20-
)	
vs.)	
)	
THE CRACKED EGG, LLC,)	
)	
Defendant.)	

COMPLAINT IN CIVIL ACTION – EQUITY

AND NOW comes the County of Allegheny, acting by and through the Allegheny County Health Department (hereinafter “Department” or “ACHD”) and its undersigned attorneys, and brings this action pursuant to the ACHD’s Rules and Regulations, Article III, Food Safety (Allegheny County Code of Ordinances Chapter 830) (hereinafter “Article III”), against Defendant, The Cracked Egg, LLC, and in support thereof avers the following:

PARTIES

1. Plaintiff is the County of Allegheny, a home rule county and political subdivision of the Commonwealth of Pennsylvania, acting by and through the ACHD, a local health department organized under the Local Health Administration Law, 16 P.S. §§ 12001-12029, whose powers and duties include the enforcement of laws relating to public health and food and environmental safety within Allegheny County.

2. Upon information and belief, Defendant The Cracked Egg, LLC operates a food facility, The Crack’d Egg, at 4131 Brownsville Road, Pittsburgh, PA, 15227 (lot and block number 0188-N-00133).

3. The property that The Crack'd Egg operates from is owned by Tri-River Associates II, LLC.

BACKGROUND

4. The ACHD is a local health department organized under the Local Health Administration Law, 16 P.S. §§ 12001-12029 (hereinafter, "LHAL"), whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including, but not limited to ACHD Article III, Food Safety.

5. The LHAL requires that whenever the ACHD's director finds a nuisance detrimental to the public health, the director must order that that nuisance be abated. 16 P.S. § 12012(d).

6. Pursuant to the Pennsylvania Disease Prevention and Control Law of 1955 (hereinafter "DPCL"), the ACHD has primary responsibility for the prevention and control of communicable and non-communicable diseases in Allegheny County. 35 P.S. § 521.3(a).

7. Section 5 of the DPCL states, "Upon receipt by a local board or department of health or by the department, as the case may be, of a report of a disease which is subject to isolation, quarantine, or any other control measure the local board or department of health or the department shall carry out the appropriate control measures in such a manner and in such a place as is provided by rule or regulation." 35 P.S. § 521.5.

8. The DPCL authorizes the State Advisory Health Board to promulgate rules and regulations concerning, "...the communicable diseases which are subject to isolation, quarantine, or other control measures..." 35 P.S. § 521.16(a)(3).

9. The ACHD is a "local health authority" as that term is defined by State Advisory Health Board promulgated regulations. See 28 Pa. Code § 27.1.

10. As a county department of health organized under the LHAL, the ACHD is a "local

morbidity reporting office” or “LMRO”, as that term is defined by the State Advisory Health Board at 28 Pa. Code § 27.1.

11. The State Advisory Health Board has issued a regulation regarding communicable disease control measures which states:

a. “The Department or local health authority shall direct isolation of a person or an animal with a communicable disease or infection; surveillance, segregation, quarantine or modified quarantine of contacts of a person or an animal with a communicable disease or infection; and any other disease control measure the Department or the local health authority considers to be appropriate for the surveillance of disease, when the disease control measure is necessary to protect the public from the spread of infectious agents.

b. The Department and local health authority will determine the appropriate disease control measure based upon the disease or infection, the patient's circumstances, the type of facility available and any other available information relating to the patient and the disease or infection.

c. If a local health authority is not an LMRO, it shall consult with and receive approval from the Department prior to taking any disease control measure.”

28 Pa. Code § 27.60.

12. COVID-19 is a highly infectious, communicable disease caused by a new coronavirus not previously seen in humans. It is a respiratory disease with symptoms including fever, cough, shortness of breath, and difficulty breathing.

13. On March 6, 2020, Pennsylvania Governor Tom Wolf, finding that threat from COVID-19 constitutes a threat of imminent disaster to the health of the citizens of the Commonwealth, made a statewide disaster declaration concerning the COVID-19 pandemic.

14. On March 12, 2020, Allegheny County made a county-wide emergency declaration due to the COVID-19 pandemic according to the ratification by county council.

15. Based on a determination that universal face coverings were an appropriate

control measure for COVID-19, the *Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings* (hereinafter, “Universal Face Coverings Order”), was issued by the Commonwealth of Pennsylvania on July 1, 2020.

16. Section 2 of the Universal Face Coverings Order requires the use of face coverings at indoor locations where the public is generally admitted and while engaged in work, including at restaurants.

17. Based on a determination that certain limitations on the occupancy of food service facilities were an appropriate control measure for COVID-19, the *Order of the Secretary of the Pennsylvania Department of Health Directing Targeted Mitigation Measures* (hereinafter, “Targeted Mitigation Order”) (the Universal Face Coverings Order and the Targeted Mitigation Order shall hereinafter collectively be referred to as the “COVID-19 Control Measure Orders”) was issued by the Commonwealth of Pennsylvania on July 15, 2020.

18. Section 1.B.i of the Targeted Mitigation Order requires, *inter alia*, restaurants to limit occupancy to 25% of stated fire code maximum occupancy for indoor dining and to limit occupancy at discrete indoor events or gatherings to 25 persons.

19. Section 1.B.ii of the Targeted Mitigation Order indicates that the occupancy limits imposed by Section 1.B.i include restaurant staff.

20. Section 1.B.iii of the Targeted Mitigation Order requires restaurants to employ social distancing, masking, and other mitigation measures to protect workers and patrons.

21. Section 7 of the Targeted Mitigation Order states, “Enforcement of this Order will begin on the effective date. All Commonwealth agencies involved in the licensing or inspection of any of the above-described facilities are directed to increase their enforcement efforts to ensure compliance with these critical mitigation measures. All local officials currently involved

or able to be involved in the Commonwealth's enforcement efforts are called upon to enforce these critical mitigation measures.

22. On October 5, 2015, the ACHD issued a permit to The Cracked Egg, LLC for the operation of The Crack'd Egg, client number 201510290005.

23. From July 1, 2020 through the present, The Cracked Egg, LLC has repeatedly violated orders issued by the Commonwealth of Pennsylvania and the ACHD's Article III at The Crack'd Egg.

24. The ACHD has initiated this suit to seek all remedies available under Article III and the ACHD's Rules and Regulations Article XVI, Environmental Health Civil Penalties, (hereinafter "Article XVI") regarding COVID-19 violations. Furthermore, ACHD seeks those remedies including injunctive relief and the imposition of civil penalties.

**COUNT 1:
VIOLATION OF COMMONWEALTH OF PENNSYLVANIA COVID-19
CONTROL MEASURE ORDERS:
UNIVERSAL FACE COVERING AND OTHER MITIGATION MEASURES**

25. The averments set forth in Paragraphs 1-24 are incorporated by reference as though fully set forth below.

26. In accordance with the COVID-19 Control Measure Orders, The Crack'd Egg must require all employees and patrons to wear face coverings when on the premises of the facility, employ proper social distancing measures, and cease using the bar area for customer seating.

27. On or about June 19, 2020, the ACHD began receiving complaints from the public regarding failure to comply with the COVID-19 Control Measure Orders at The Crack'd Egg. To date, the ACHD has received 16 complaints concerning failure to comply with the COVID-19 Control Measure Orders at The Crack'd Egg.

28. In response to these citizen complaints, the ACHD sent representatives to investigate the compliance status of The Crack'd Egg on July 1, 2020. During that onsite visit, ACHD representatives observed public-facing employees not wearing masks when interacting with customers and multiple customers not wearing masks as they entered the facility. These observations were documented in an Inspection Report, dated July 1, 2020, and attached hereto as Exhibit "A".

29. During the July 1, 2020 onsite visit at The Crack'd Egg, the ACHD representatives provided guidance on control measure order compliance.

30. Despite the compliance guidance provided to The Crack'd Egg on July 1, 2020, the ACHD continued to receive citizen complaints about failure to comply with COVID-19 control measure orders issued by the Governor and the County at the The Crack'd Egg.

31. On July 28, 2020, due to the continued citizen complaints, ACHD representatives conducted another onsite inspection for COVID-19 assessment. During this onsite inspection, ACHD representatives observed employees and patrons not wearing face masks. These observations were documented in a COVID-19 Assessment Report, dated July 28, 2020, and attached hereto as Exhibit "B".

32. On August 5, 2020, due to continued citizen complaints, ACHD representatives conducted a third onsite inspection. During this onsite inspection, ACHD representatives observed food safety violations of Article III and COVID-19 violations, including public-facing employees working without wearing face masks, patrons admitted into facility without face masks, permitting the use of a bar area, and failure to sufficiently space apart outdoors seats. These observations were documented in an Inspection Report, dated August 5, 2020, and attached hereto as Exhibit "C".

33. During the August 5, 2020 onsite visit at The Crack'd Egg, the ACHD representatives

provided guidance on control measure order compliance and provided the facility with a COVID-19 Safety Procedures for Businesses poster to be posted at the facility.

34. On August 7, 2020, ACHD representatives conducted a follow-up onsite inspection. During this onsite inspection, ACHD representatives observed food safety violations of Article III and COVID-19 violations, including public-facing employees working without wearing face masks, patrons admitted into facility without face masks, and failure to sufficiently space apart outdoors seats. These observations were documented in an Inspection Report, dated August 7, 2020, and attached hereto as Exhibit "D".

35. During the August 7, 2020 onsite visit at The Crack'd Egg, the ACHD representatives provided guidance on control measure order compliance and corrective actions for the violations identified.

36. On August 11, 2020, ACHD representatives conducted a partial onsite reinspection to assess COVID-19 compliance. During this onsite inspection, ACHD representatives observed public-facing employees working without wearing face masks and a patron admitted into the facility without a face mask. These observations were documented in an Inspection Report, dated August 11, 2020, and attached hereto as Exhibit "E".

37. Due to continued non-compliance with the COVID-19 Control Measure Orders observed on the August 11th Inspection, the ACHD determined that The Crack'd Egg's failure to comply with the COVID-19 Control Measure Orders constituted an imminent danger to the public health and, on August 11, 2020, issued, pursuant to the authority granted by Article III § 337.1, an immediate permit suspension order to The Crack'd Egg (hereinafter "Permit Suspension Order"). The Permit Suspension Order is attached hereto as Exhibit "F".

38. These recorded instances during which The Crack'd Egg operated in violation of the

COVID-19 Control Measure Orders, as averred in Paragraphs 28-36, necessitated the commencement of this enforcement action.

**COUNT 2:
VIOLATION OF ARTICLE III § 337.1:
PERMIT SUSPENSION**

39. The averments set forth in Paragraphs 1-38 are incorporated by reference as though fully set forth below.

40. Article III § 337.1 states as follows:

If the Director finds there is imminent danger to the public health the permit shall immediately be suspended. Any person whose permit has been suspended under this section shall upon written request be entitled to a hearing pursuant to Article XI, "Hearings and Appeals", of the Allegheny County Rules and Regulations. Upon suspension or revocation of a permit, the Director shall immediately post a notice of permit suspension or revocation in plain view at all customer entrances to the premises. Such notice shall not be concealed or removed. Removal shall be only at the direction of the Department. A person whose permit has been suspended shall have the permit reinstated upon completion of the corrective action required by the Director and an inspection verifying such corrections. It shall be unlawful to operate a food facility with a suspended permit.

41. On August 13, 2020 and on subsequent dates, an organization entitled Entrepreneurs Against Tyranny posted on social media that The Crack'd Egg will host an event at its premises on August 24, 2020. The social media posts are attached hereto as Exhibit "G".

42. On August 21, 2020, the ACHD issued a warning letter to The Crack'd Egg that opening the facility will result in violations of the Department's Article III (hereinafter "Warning Letter"). The Warning Letter is attached here to as Exhibit "H".

43. During on-site observations conducted on August 24, 2020 through August 28, 2020, inclusive, August 31, 2020 through September 4, 2020, inclusive, and September 10, 2020, ACHD representatives observed continued operations at The Crack'd Egg in violation of the Permit

Suspension Order. During those on-site observations, ACHD representatives also observed continued violations of the COVID-19 Control Measure Orders. The observations were documented in a series of memorandums and photographs attached hereto as Exhibit "I".

44. On August 26, 2020, August 27, 2020, and August 28, 2020, The Crack'd Egg concealed the closure placard placed by the ACHD on its facility, in violation of Article III § 337.1.

45. On August 31, 2020, September 1, 2020, September 2, 2020, September 3, 2020, September 4, 2020, and September 10, 2020, the closure placard placed by the ACHD on The Crack'd Egg was not posted, in violation of Article III § 337.1.

46. The Crack'd Egg blatantly advertised its deliberate intention to operate and actual operation in spite of the Permit Suspension Order on Facebook. Those advertisements were posted to The Crack'd Egg's Facebook page on August 12, 2020, August 17, 2020, August 31, 2020, and September 1, 2020. PDF copies of those Facebook posts are collectively attached hereto as Exhibit "J".

47. To date, The Cracked Egg, LLC has not filed an appeal of the Permit Suspension Order with the ACHD.

48. These recorded instances during which The Crack'd Egg violated Article III § 337.1 by operating and either concealing or removing the closure placard, as averred in Paragraphs 43-45, necessitated the commencement of this enforcement action.

WHEREFORE, the ACHD respectfully requests this honorable Court to find in favor of Plaintiff Allegheny County and against Defendant The Cracked Egg, LLC on all Counts averred in this Complaint and grant the following relief:

- a. Enter judgment declaring The Cracked Egg, LLC failed to comply with the

Commonwealth of Pennsylvania's COVID-19 Control Measure Orders and Article III § 337.1.

- b. Enjoin The Crack'd Egg from operating until a COVID-19 compliance plan is submitted to and approved by the ACHD.
- c. Direct The Cracked Egg, LLC to pay to the ACHD Food Safety Fund civil penalties consistent with Article XVI §1605 and Article III §337.4(D) prior to re-opening for violations of its ACHD permit.
- d. Grant any such other relief as the Court deems necessary and/or appropriate.


Date: 9/14/2020

By: Vijya Patel
Vijyalakshmi Patel, Esq.
Attorney for the Plaintiff Allegheny County
301 39th Street, Bldg. No. 7
Pittsburgh, PA 15201-1891
Tel.: 412-578-2653
Email: Vijya.Patel@AlleghenyCounty.US

VERIFICATION

I, Donna L. Scharding, certify that I am authorized to make this verification on Plaintiff's behalf. I hereby verify that the averments made in the foregoing COMPLAINT IN CIVIL ACTION – EQUITY are true and correct to the best of my knowledge, information, and belief. I understand that this verification is made subject to the penalties provided in 18 P.S. § 4904, relating to unsworn falsification to authorities.

9-14-20
Date: _____


By: _____
Donna Scharding
Food Safety Program Manager
Allegheny County Health Department
For the Plaintiff



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM
 3901 PENN AVE,
 PITTSBURGH, PA 15224
 PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT REPORT

Client ID: 201510290005 Client Name: The Crack'd Egg
 Address: 4131 Brownsville Road
 City: Pittsburgh State: PA Zip: 15227
 Municipality: Brentwood Inspector: Nakkeow, Varangkorn
 Category Code: 211-Restaurant without Liquor
 Re-Inspection: No - Inspector Re-Inspection Date: Inspection Date: 07/01/2020
 Purpose: Complaint
 Permit Exp. Date: 10/31/2020
 Priority Code: H

Food Safety Assessment Categories	Assessment Status					Violation Risk		
	S	NO	NA	V	High	Med.	Low	
1 Food Source/Condition								
2 Cooking Temperatures #								
3 Consumer Advisory								
4 Reheating Temperatures #								
5 Cooling Food #								
6 Hot Holding Temperatures #								
7 Cold Holding Temperatures #								
8 Facilities to Maintain Temperature								
9 Date Marking of Food								
10 Probe-Type Thermometers								
11 Cross-Contamination Prevention #								
12 Employee Health #								
13 Employee Personal Hygiene #								
14 Cleaning and Sanitization #								
15 Water Supply								
16 Waste Water Disposal								
17 Plumbing								
18 Handwashing Facilities								
19 Pest Management #								
20 Toxic Items								
21 Certified Food Protection Manager								
22 Demonstration of Knowledge								
23 Contamination Prevention - Food, Utensils and Equipment								
24 Fabrication, Design, Installation and Maintenance								
25 Toilet Room								
	0	0	0	0	0	0	0	
General Sanitation	Assessment Status					Violation Risk		
	S	NO	NA	V	High	Med.	Low	
26 Garbage and Refuse								
27 Floors								
28 Walls and ceilings								
29 Lighting								
30 Ventilation								
31 Dressing rooms and Locker rooms								
32 General Premises								
33 Administrative				x				
	0	0	0	0	1	0	0	
# U.S. Centers for Disease Control and Prevention "high risk" for	0	0	0	0	1	0	0	

◆ - Diamond Exceptional S - Satisfactory NO - Not Observed NA - Not Applicable V - Violation
 Client # 201510290005





ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVE,
PITTSBURGH, PA 15224

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

INSPECTION DETAILS

Inspector Name: Nakkeow , Varangkorn

Balance Amount: \$0.00

Placarding: Inspected & Permitted

Contact: Kimberly & Don Waigar

Start Time: 09:50:00 AM End Time: 11:00:00 AM

Phone: (412) 881-3000

Violation: **33 Administrative**

Comments: - Facility is not complying with the mask usage guidelines. 3 - 4 public facing employees not wearing masks when interacting with customers.
- Multiple customers observed entering the facility with no mask on during inspection.

Food Code Section(s): 330

Corrective Action: Wear a mask or a facial covering.

Other Assesment observations and comments:

Exceptional Observations:

General Comments:

- Inspection conducted as a follow-up to multiple received complaints of no mask usage. Facility owner present at the time of inspection. Multiple employees observed without masks or facial covering. No enforcement of mask usage for customers entering the facility. Owner, as of today, will speak to her public-interfacing employees about wearing a mask. Owner will continue to provide disposable surgical masks. Signs are placed at the reception desk and on the sign board outside. Discussed mask usage guidelines, who and where a mask needs to be worn, and policy going forward. Owner feels it is a violation of personal rights to force employees to wear a mask. See attached files.

Update: 7/7/2020

Facility kitchen is large enough to accomodate three employees without crowding. Owner stated that there is no more than 2 cooks and a single dish washer present at any given time.



ALLEGHENY COUNTY HEALTH DEPARTMENT
 FOOD SAFETY PROGRAM
 3901 PENN AVE,
 PITTSBURGH, PA 15224
 PHONE: 412-578-8044 FAX: 412-578-8190
 COVID-19 ASSESSMENT REPORT

Client ID: 201510290005 Client Name: The Crack'd Egg
 Address: 4131 Brownsville Road Date: 07/28/2020
 City: Pittsburgh State: PA Zip: 15227 Purpose: COVID-19 Assessment
 Municipality: Brentwood Assessor: K012983
 Category Code: 211-Restaurant without Liquor

Assessment Categories	Assessment	
	Satisfactory	Unsatisfactory
Indoor occupancy (25%)	x	
Tables 6 feet apart	x	
Closed bar seating	x	
Face coverings by staff		x
Table service only	x	
Zero tobacco usage	x	
Closed by 11:00 pm	x	
	6	1
	6	1

ASSESSMENT DETAILS

Assessor: K012983 Contact: Kimberly & Don Waigar
 Start Time: 12:10:00 PM End Time: Phone: (412) 881-3000

Unsatisfactory

Face coverings by staff

Comments: Masks not required for staff or patrons. Masks are made available though.

Other assessment observations and comments:

Tables 6 feet apart Satisfactory
 Every other table sat.
 Closed bar seating Satisfactory
 N/A
 Table service only Satisfactory
 N/A





ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

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FOOD SAFETY ASSESSMENT
REPORT

Client ID: 201510290005
Address: 4131 Brownsville Road
City: Pittsburgh
Municipality: Brentwood
Category Code: 211-Restaurant without Liquor
Re-Inspection: Yes - Inspector

Client Name: The Crack'd Egg
State: PA **Zip:** 15227
Inspector: Nakkeow, Varangkorn
Re-Inspection Date: 08/06/2020

Inspection Date: 08/05/2020
Purpose: Initial, Compl
Permit Exp. Date: 10/31/2020
Priority Code: 1

Food Safety Assessment Categories	Assessment Status					Violation Risk		
	◆	S	NO	NA	V	High	Med.	Low
1 Food Source/Condition	◆				x			x
2 Cooking Temperatures #		x						
3 Consumer Advisory		x						
4 Reheating Temperatures #			x					
5 Cooling Food #					x	x		x
6 Hot Holding Temperatures #		x						
7 Cold Holding Temperatures #					x	x		
8 Facilities to Maintain Temperature		x						
9 Date Marking of Food					x			
10 Probe-Type Thermometers		x						x
11 Cross-Contamination Prevention #		x						
12 Employee Health #		x						
13 Employee Personal Hygiene #		x						
14 Cleaning and Sanitization #		x						
15 Water Supply					x	x		x
16 Waste Water Disposal		x						
17 Plumbing		x						
18 Handwashing Facilities		x						
19 Pest Management #								
20 Toxic Items					x			x
21 Certified Food Protection Manager		x			x		x	
22 Demonstration of Knowledge					x		x	
23 Contamination Prevention - Food, Utensils and Equipment		x						
24 Fabrication, Design, Installation and Maintenance					x			x
25 Toilet Room		x						
General Sanitation	0	15	1	0	9	3	2	6
	◆	S	NO	NA	V	High	Med.	Low
26 Garbage and Refuse	◆				x			x
27 Floors		x						
28 Walls and ceilings		x						
29 Lighting		x						
30 Ventilation					x			
31 Dressing rooms and Locker rooms				x				x
32 General Premises		x						
33 Administrative					x			
# U.S. Centers for Disease Control and Prevention "high risk" for	0	4	0	1	3	0	0	2
	0	19	1	1	12			

◆ - Diamond Exceptional
Client # 201510290005

S - Satisfactory NO - Not Observed NA - Not Applicable V - Violation





ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

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FOOD SAFETY ASSESSMENT
REPORT

INSPECTION DETAILS

Inspector Name: Nakkeow , Varangkorn

Balance Amount: \$0.00

Placarding: Inspected & Permitted

Contact: Kimberly & Don Waigar

Start Time: 09:50:00 AM End Time: 12:40:00 PM

Phone: (412) 881-3000

Violation: 1 Food Source/Condition

Comments: *LOW RISK*

- Bulk storage of dry ingredients such as a flour stored in a three-compartment plastic rolling bin in the basement preparation area.. No labels present for the bulk items.

Food Code Section(s): 303

Corrective Action: - Properly label.

Violation: 5 Cooling Food

Comments: *HIGH RISK***

- Plastic gallon sized container of sausage gravy and a 2/3 insert pan of home fries found cooling improperly. Temperature of the home fries between 77-96°F after 3 hours. Sausage gravy, temperatures reported by the operator between 72-77°F after 3 hours, when taken by the inspector, temperatures found at 85°F. Products discarded during inspection.

LOW RISK

- Cooling charts incorrectly filled out and time/temperatures not met during monitoring.
- Incorrect cooling procedures in place. Ice baths used do not meet the level of the food and the containers do not provide sufficient amounts of ice/water. Containers are almost equal in size.

Food Code Section(s): 304

Corrective Action: Use approved means such as blast chillers or adding ice to a condensed food.

Corrective Action: Cool cooked foods in uncovered metal containers 4 inches or less in depth or in pieces smaller than 4 pounds.

Violation: 7 Cold Holding Temperatures

Comments: *HIGH RISK***

- Portions of sliced cheeses wrapped in plastic found stored at 53°F in the upper compartment of the preparation cooler across from the cook line of the kitchen. Product moved to the lower compartment of the preparation cooler.

Food Code Section(s): 303

Corrective Action: Food must be held at 41° F or below

Violation: 9 Date Marking of Food

Comments: *LOW RISK*

- Prepared foods found stored and labeled with preparation dates and no discard dates throughout the facility.

Food Code Section(s): 304

Corrective Action: Properly label foods

Corrective Action: Discard date = Preparation date + 6 days.



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

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FOOD SAFETY ASSESSMENT
REPORT

Violation:

14 Cleaning and Sanitization

Comments:

*HIGH RISK***

- Deli slicer in the basement preparation area found soiled with a layer of old food debris on the backside of the cutting blade. Operator cleaned the unit during inspection.

LOW RISK

- Facility lacks test strips for low temperature chlorine dish machine behind the breakfast bar.
- Gaskets of the lower compartments of the preparation coolers found soiled with food debris present.

- Unidentifiable pink slime found present along the inside lip of the ice machine chute.

Food Code Section(s): 312

Corrective Action:

Clean and sanitize food-contact surfaces of equipment and utensils after each use and following any interruption of operations, during which time, contamination may have occurred utilizing the following procedure:

1. Wash- hot soapy water.
2. Rinse-clear water.
3. Sanitize-approved sanitizer and water.
4. Air-dry.

Corrective Action:

Clean and maintain non-food-contact surfaces of equipment

Corrective Action:

Provide appropriate test strips or monitoring equipment

Violation:

19 Pest Management

Comments:

LOW RISK

- Screen door in the basement that leads to the rear of the facility has multiple gaps present between the door and the frame. Visible light comes through around the door when closed. Seal.

Food Code Section(s): 319

Corrective Action:

Eliminate harborage area, food sources, and entry sites

Violation:

20 Toxic Items

Comments:

*MEDIUM RISK**

- Kitchen:

-- Stainless steel polish stored above the hand sink/preparation where eggs are being actively cooled under running water next to the dish machine.

-- Spray cleaner stored on top of the ice machine and food preparation table next to the pass.

-- Compressed gas canisters and torch stored above the preparation table next to the right side range burners where food is being actively cooled.

- Basement:

-- Chemical cleaning agents, such as Comet stored above the preparation area across from the walk-in.

Food Code Section(s): 325

Corrective Action:

Store chemicals below or separate from food and food contact surfaces

Violation:

22 Demonstration of Knowledge

Comments:

*MEDIUM RISK**

- Kitchen manager unaware of proper cooling procedures.

Food Code Section(s): 336

Corrective Action:

Temperature Control - Cooling.



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FOOD SAFETY ASSESSMENT
REPORT

Violation: 24 Fabrication, Design, Installation and Maintenance

Comments: *LOW RISK*
- Facility is using milk crates throughout the facility to elevate food items, such as cases of eggs and pancake batter from the floor in the walk-in cooler.
- Facility is using milk crates behind the breakfast bar to elevate utensils and single service articles from the floor.

Food Code Section(s): 309

Corrective Action: Repair / replace equipment

Violation: 26 Garbage and Refuse

Comments: *LOW RISK*
- Dumpster stored on grass and dirt next to the paved parking lot behind the facility.

Food Code Section(s): 318

Corrective Action: Provide smooth, well-drained, easily cleaned surface

Violation: 30 Ventilation

Comments: *LOW RISK*
- Cooking equipment not completely installed under the ventilation hood. Overhang not present along the left side of the ventilation hood over the range burners.

Food Code Section(s): 323

Corrective Action: Install equipment completely under hood / Provide sufficient overhang

Violation: 33 Administrative

Comments:
- Failure to comply with mandate requiring face coverings. Three employees working without masks or other face coverings.
- Failure to comply with requirement of patrons/guests entering into the facility with mask or face covering. Two guests observed entering the facility, not wearing a mask or face covering.
- Failure to comply with spacing and seating. Breakfast bar in-use and lack of spacing of outdoor seats. Breakfast bar accommodates five guests and seats are not spaced apart.

Food Code Section(s): 330

Corrective Action: Comply with government guidelines.

Other Assesment observations and comments:

Exceptional Observations:

General Comments:

Inspection conducted with Rachel Casteel, EHS I, in response to repeated complaints of no mask/facial covering usage. Facility does not require employees to wear a mask. No supply of masks observed during inspection. Public facing employees observed not wearing masks. Guests not wearing masks allowed into the facility without notice to have a mask or facial covering put on. Breakfast bar in-use for guest seating and dining. Bar accommodates five guests, but do not space out the seating. Facility does not have the COVID-19 Safety Procedures for Businesses poster posted. Discussed COVID-19 operating procedures and guidelines with the manager after report review. Facility given 24 hours for compliance, reinspection scheduled for 8/6/2020 to ensure compliance. Facility provided with the poster for COVID-19 Safety Procedures for Businesses to have filled out and displayed. In regards to the kitchen temperatures, ambient air temperature 88°F and spacing is available for distancing. Spacing of in-use tables is in adequate for the outdoor dining area. See uploaded images. Indoor dining and use of tables could not be identified due to decreased facility traffic.



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

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PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

Client ID: 201510290005 Client Name: The Crack'd Egg
 Address: 4131 Brownsville Road
 City: Pittsburgh State: PA Zip: 15227
 Municipality: Brentwood Inspector: Nakkeow, Varangkorn
 Category Code: 211-Restaurant without Liquor
 Re-Inspection: Yes - Inspector Re-Inspection Date: 08/10/2020
 Inspection Date: 08/07/2020
 Purpose: Reinspection
 Permit Exp. Date: 10/31/2020
 Priority Code: H

Food Safety Assessment Categories	Assessment Status					Violation Risk		
	S	NO	NA	V	High	Med.	Low	
1 Food Source/Condition				x	x			
2 Cooking Temperatures #								
3 Consumer Advisory								
4 Reheating Temperatures #								
5 Cooling Food #				x		x		
6 Hot Holding Temperatures #								
7 Cold Holding Temperatures #				x	x			
8 Facilities to Maintain Temperature								
9 Date Marking of Food				x			x	
10 Probe-Type Thermometers								
11 Cross-Contamination Prevention #								
12 Employee Health #								
13 Employee Personal Hygiene #								
14 Cleaning and Sanitization #	x							
15 Water Supply								
16 Waste Water Disposal								
17 Plumbing								
18 Handwashing Facilities								
19 Pest Management #				x			x	
20 Toxic Items				x		x		
21 Certified Food Protection Manager								
22 Demonstration of Knowledge				x		x		
23 Contamination Prevention - Food, Utensils and Equipment								
24 Fabrication, Design, Installation and Maintenance				x			x	
25 Toilet Room								
	0	1	0	0	8	2	3	3

General Sanitation	Assessment Status					Violation Risk		
	S	NO	NA	V	High	Med.	Low	
26 Garbage and Refuse				x			x	
27 Floors								
28 Walls and ceilings								
29 Lighting								
30 Ventilation				x			x	
31 Dressing rooms and Locker rooms								
32 General Premises								
33 Administrative				x				
	0	0	0	0	3	0	0	2

U.S. Centers for Disease Control and Prevention "high risk" for

0	1	0	0	11
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◆ - Diamond Exceptional S - Satisfactory NO - Not Observed NA - Not Applicable V - Violation
 Client # 201510290005





ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

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PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

INSPECTION DETAILS

Inspector Name: Nakkeow , Varangkorn

Balance Amount: \$0.00

Placarding: Inspected & Permitted

Contact: Kimberly & Don Waigar

Start Time: 10:00:00 AM End Time: 01:00:00 PM

Phone: (412) 881-3000

Violation: **1 Food Source/Condition**

Comments:

HIGH RISK**

- Manufactured vacuum packaged frozen beef found thawing in the middle compartment of the three-bowl sink located in the basement preparation area. Water temperature 55°F and the source of the water is the drain from the ice machine. Discontinue practice. Water from ice machine drain is considered waste water.
- Pooled eggs being served to highly susceptible populations.

-- Re-inspection comment:

- Bins labeled with common name of products.

Food Code Section(s): 301 ; 302

Corrective Action: Discard/remove food that is not in sound condition or not from an approved source.

Violation: **5 Cooling Food**

Comments:

MEDIUM RISK*

- Falsified temperatures on cooling charts identified. Listed "homies" or home fries to be at 40°F, but when checked, the temperatures range between 52-55°F depending on location inside the insert pan. Pan found stored covered in the basement walk-in cooler.
- Improper cooling procedures in-place for cooling. Ice baths incorrectly setup. Ice and water do not reach the top level. Facility is placing ice in an equally sized pan under the product to be cooled and ice on top of the product container in an effort to cool. Discontinue practice.

Food Code Section(s): 304

Corrective Action: Monitor cooling temperatures of leftover food or foods prepared in advance

Corrective Action: Record cooling temperature on charts

Corrective Action: Retain cooling charts for at least 30 days

Corrective Action: Properly chart food temperatures.

Violation: **7 Cold Holding Temperatures**

Comments:

HIGH RISK**

- Pooled eggs found at 45°F in the upper compartment of the preparation located across from the range burners at the end of the cook line.

Food Code Section(s): 303

Corrective Action: Food must be held at 41° F or below

Violation: **9 Date Marking of Food**

Comments:

LOW RISK

- Facility is date-marking with +7 days to the preparation date.

Food Code Section(s): 304

Corrective Action: Properly label foods

Corrective Action: Discard date = Preparation date + 6 days.



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FOOD SAFETY ASSESSMENT
REPORT

Violation: 19 Pest Management

Comments: *LOW RISK*
- Screen door in the basement that leads to the rear of the facility has multiple gaps present between the door and the frame. Visible light comes through around the door when closed. Seal.

Food Code Section(s): 318

Corrective Action: Eliminate harborage area, food sources, and entry sites

Violation: 20 Toxic Items

Comments: *MEDIUM RISK**
- Stainless steel polish stored above the hand sink/preparation where eggs are being actively cooled under running water next to the dish machine.

Food Code Section(s): 325

Corrective Action: Store chemicals below or separate from food and food contact surfaces

Violation: 22 Demonstration of Knowledge

Comments: *MEDIUM RISK**
- Owner is unaware of proper cooling procedures. Owner is taking the servsafe course on Monday, 8/10/2020.

Food Code Section(s): 336

Corrective Action: Temperature Control - Cooling.

Violation: 24 Fabrication, Design, Installation and Maintenance

Comments: *LOW RISK*
- Facility is using milk crates throughout the facility to elevate food items, such as cases of eggs and pancake batter from the floor in the walk-in cooler.
- Facility is using milk crates behind the breakfast bar to elevate utensils and single service articles from the floor.
- Facility is using milk crates in the lower compartment of the preparation cooler across from the range burner at the end of the cook line.

Food Code Section(s): 309

Corrective Action: Resurface / replace

Corrective Action: Provide approved, NSF standard equipment

Violation: 26 Garbage and Refuse

Comments: *LOW RISK*
- Dumpster stored on grass and dirt next to the paved parking lot behind the facility.

Food Code Section(s): 318

Corrective Action: Provide smooth, well-drained, easily cleaned surface

Violation: 30 Ventilation

Comments: *LOW RISK*
- Cooking equipment not completely installed under the ventilation hood. Overhang not present along the left side of the ventilation hood over the range burners. Kitchen temperature between 87-88°F.

Food Code Section(s): 323

Corrective Action: Install equipment completely under hood / Provide sufficient overhang



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVE,
PITTSBURGH, PA 15224

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

Violation:

33 Administrative

Comments:

- Failure to comply with mandate requiring face coverings. Five employees working without masks or other face coverings.
- Failure to comply with spacing and seating. Spacing of tables for outdoor seating are not adequately spaced apart. Guests observed grouped up in the patio dining area.
- Failure to comply with requirement of patrons/guests entering into the facility with mask or face covering. Two guests observed entering the facility, not wearing a mask or face covering.
- Tables stated to be not in-use are not marked with indicators. Owner stated that tables to be used are marked with welcome signs.

Food Code Section(s): 330

Corrective Action: Comply with government guidelines and mandates.

Other Assessment observations and comments:

14 Cleaning and Sanitization

Satisfactory

- Deli slicer in the basement preparation area is clean.
- Test strips provided for the breakfast bar area.
- No pink slime identified inside the ice machine chute.

Exceptional Observations:

General Comments:

Administrative conference with the owner, Kim Waigand, regarding COVID-19 guidelines and policies. Discussed corrective actions to the violations identified. Inspection conducted with Rachel Casteel, EHS I, and Janet Russo, EH Supervisor in regards to complaints of no mask usage in the facility by public facing employees. Public facing employees observed not wearing masks. Guests not wearing masks allowed into the facility without notice to have a mask or facial covering put on.



ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM
 3901 PENN AVE,
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 PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT REPORT

Client ID: 201510290005 Client Name: The Crack'd Egg
 Address: 4131 Brownsville Road
 City: Pittsburgh State: PA Zip: 15227
 Municipality: Brentwood Inspector: Nakkeow, Varangkorn
 Category Code: 211-Restaurant without Liquor
 Re-Inspection: Pending - Inspector Re-Inspection Date:
 Inspection Date: 08/11/2020
 Purpose: Partial ReInsp
 Permit Exp. Date: 10/31/2020
 Priority Code: H

Food Safety Assessment Categories	Assessment Status					Violation Risk		
	S	NO	NA	V	High	Med.	Low	
1 Food Source/Condition								
2 Cooking Temperatures #								
3 Consumer Advisory								
4 Reheating Temperatures #								
5 Cooling Food #								
6 Hot Holding Temperatures #								
7 Cold Holding Temperatures #								
8 Facilities to Maintain Temperature								
9 Date Marking of Food								
10 Probe-Type Thermometers								
11 Cross-Contamination Prevention #								
12 Employee Health #								
13 Employee Personal Hygiene #								
14 Cleaning and Sanitization #								
15 Water Supply								
16 Waste Water Disposal								
17 Plumbing								
18 Handwashing Facilities								
19 Pest Management #								
20 Toxic Items								
21 Certified Food Protection Manager								
22 Demonstration of Knowledge								
23 Contamination Prevention - Food, Utensils and Equipment								
24 Fabrication, Design, Installation and Maintenance								
25 Toilet Room								
	0	0	0	0	0	0	0	0

General Sanitation	Assessment Status					Violation Risk		
	S	NO	NA	V	High	Med.	Low	
26 Garbage and Refuse								
27 Floors								
28 Walls and ceilings								
29 Lighting								
30 Ventilation								
31 Dressing rooms and Locker rooms								
32 General Premises								
33 Administrative					X			
	0	0	0	0	1	0	0	0

U.S. Centers for Disease Control and Prevention "high risk" for

◆ - Diamond Exceptional S - Satisfactory NO - Not Observed NA - Not Applicable V - Violation
 Client # 201510290005





ALLEGHENY COUNTY HEALTH DEPARTMENT

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3901 PENN AVE,
PITTSBURGH, PA 15224

PHONE: 412-578-8044 FAX: 412-578-8190

FOOD SAFETY ASSESSMENT
REPORT

INSPECTION DETAILS

Inspector Name: Nakkeow, Varangkorn

Balance Amount: \$0.00

Placarding: Closure/Imminent Hazard

Contact: Kimberly & Don Waigar

Start Time: 12:30:00 PM **End Time:** 01:45:00 PM

Phone: (412) 881-3000

Violation: 33 Administrative

Comments: 330.1b

- Failure to comply with mask or facial covering guidelines. 4 employees who take orders and deliver food to guests observed not wearing facial coverings. Facility owner observed not wearing a facial covering. Observed one guest enter the facility without a mask or facial covering and proceeded to seat himself.
- Facility will remain closed for 7 days. Do not conceal or remove the closure placard. A reinspection must be requested and an inspection must be conducted prior to permit reinstatement.

337.1

- Summary Suspension/Imminent Hazard If the Director finds there is imminent danger to the public health the permit shall immediately be suspended.

PA Disease Prevention and Control Law, Section 521.5

Order of the Secretary of the Pennsylvania Department of Health for Universal Face Coverings, dated July 1, 2020

Food Code Section(s): 330

Corrective Action: Employees and patrons are to properly wear face covering as described in the Order of the Secretary of the Pennsylvania Department of Health for Universal Face Coverings, dated July 1, 2020.

The facility must provide a written copy of its COVID-19 prevention plan prior to reopening. The facility must provide information on how it will comply to all COVID-19 orders and guidance issued by the Commonwealth and the Allegheny County Health Department.

Other Assessment observations and comments:

Exceptional Observations:

General Comments:

Facility ordered closed per the Food Safety Program. Appeals can be sent to the address listed below. EH Supervisor, Janet Russo, and EH Specialist I, Zachery Prokocki-Loomis, present for the inspection.

Address:

Dr. Debra Bogen
542 Fourth Ave
Pittsburgh, PA 15219

Partial re-inspection conducted in response to violations pertaining to COVID-19 orders and guidance issued by the Commonwealth and the Allegheny County Health Department.

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

August 11, 2020

The Crack'd Egg
Kimberly & Don Waigand
4131 Brownsville Road
Pittsburgh, PA 15227

Re: Client# 201510290005
The Crack'd Egg
4131 Brownsville Road
Brentwood, 15227

Dear Kimberly & Don Waigand,

An inspection of your facility on 08/11/2020 indicates an imminent hazard to the public health.

THEREFORE, IN ACCORDANCE WITH ARTICLE III, SECTION 337, YOUR HEALTH PERMIT IS SUSPENDED AND YOU ARE **ORDERED TO CLOSE** THE FACILITY IMMEDIATELY UPON RECEIPT OF THIS NOTICE. IT IS ILLEGAL TO OPERATE A FOOD FACILITY IN ALLEGHENY COUNTY WITHOUT A HEALTH PERMIT.

Failure to close will result in immediate initiation of an enforcement action. Notice of permit suspension shall be posted in plain view and shall not be removed or concealed except by direction of the Department.

In order to have the health permit reinstated, you must correct all emergency violations and submit to this office the attached form requesting an inspection and reinstatement of the health permit.

Article XI - "Hearings and Appeals" provides for your right for a hearing if aggrieved by this notice. Requests for a hearing must be made in writing and filed with the Department within thirty (30) days upon receipt of this notice.

Please Contact me at (412)578-7919 to resolve this matter.

Sincerely,

J Russo
Environmental Health Supervisor

Food Safety Program
3901 Penn Avenue, Building I
Pittsburgh, Pennsylvania 15224-1318
Phone: (412) 578-8044
Fax: (412) 578-8190
www.achd.net



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21 Events
Events



AUG 24 E.A.T & GREET Crack'd Egg
Public · Hosted by E.A.T

Invite

Monday, August 24, 2020 at 10:00 AM EDT
Next Week · 20-29°C Partly Cloudy

Crack'd Egg
4131 Brownsville Rd, Pittsburgh, PA 15227

Show Map

18 Going · 44 Interested

Details

Patriots...E.A.T is heading to western Pa August 24, 2020 10:00am Crack'd Egg In Brentwood...Come out and have breakfast w/ the E.A.T and help us relaunch another amazing PA business...See You There!

Crackdegg.com

4131 Brownsville Road
Pittsburgh, Pa 15227

Causes

Hosted by



About the Venue

Crack'd Egg
American Restaurant · 4.4/5 (1,414 likes)

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Related events section with a login form. Fields include 'Email or Phone' and 'Password'. Buttons include 'Log In', 'Forgot account?', and 'Sign Up'. A question 'Do you want to join Facebook?' is also present.

- 207 guests
- Food Trucks Part 2
Sun, Sep 13 EDT at Whitehall F...
243 guests
- South Hills Cars and Coffee C...
Sunday EDT at Crazy Horse Co...
245 guests
- Chicken & Ham Bar-B-Q - Driv...
Sat, Sep 12 EDT at Bellegrave ...
155 guests

English (US) · Español · Português (Brasil) · Français (France) · Deutsch

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8/21/2020

Exhibit A Page 29 of 102
E.A.P & GREET Crack'd Egg

8/20/2020



Crack'd Egg

American

Family owned and operated since October 2015! Fresh Food Service, Family Friendly. Come for a Fine Experience. Dog Friendly outside seating area. Day Cracking with US

4131 Brownsville Rd
Pittsburgh, PA 15227

<http://crackdegg.com>

Like



E.A.T

August 13 at 9:56 AM

Patriots...E.A.T is heading to western Pa August 24, 2020 10:00am [Crack'd Egg](#) In Brentwood...Come out and have breakfast w/ the E.A.T and help us relaunch another amazing PA business...See you there!!

<https://facebook.com/events/s/eat-greet-crackd-egg/1668898766594053/?ti=icl>

Crackdegg.com

4131 Brownsville Road
Pittsburgh, Pa 15227

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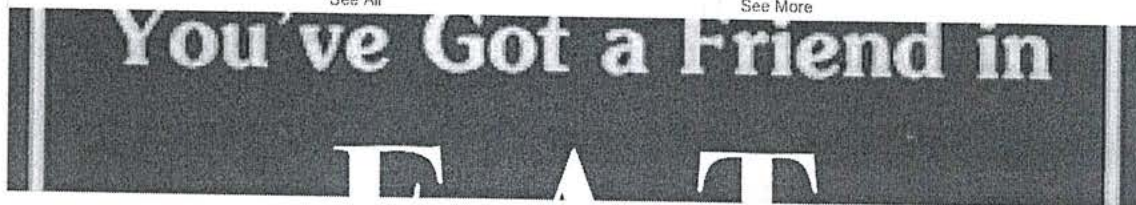
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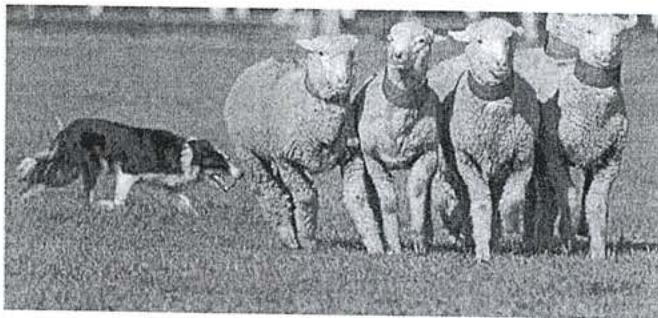
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1 Comment 4 Shares

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E.A.T

21 hrs

Our new Team shirts....We will make E.A.T shirts available if there is a request for them.



94



29 Comments 1 Share

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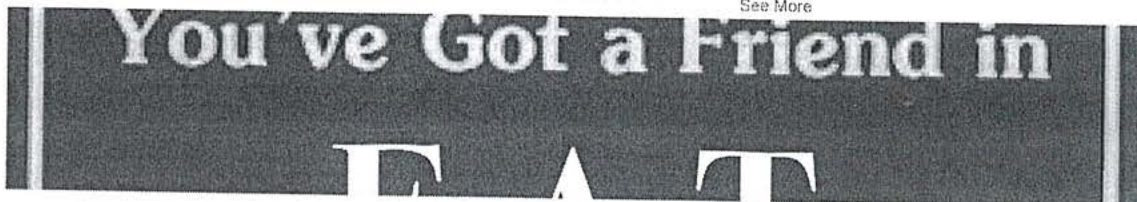


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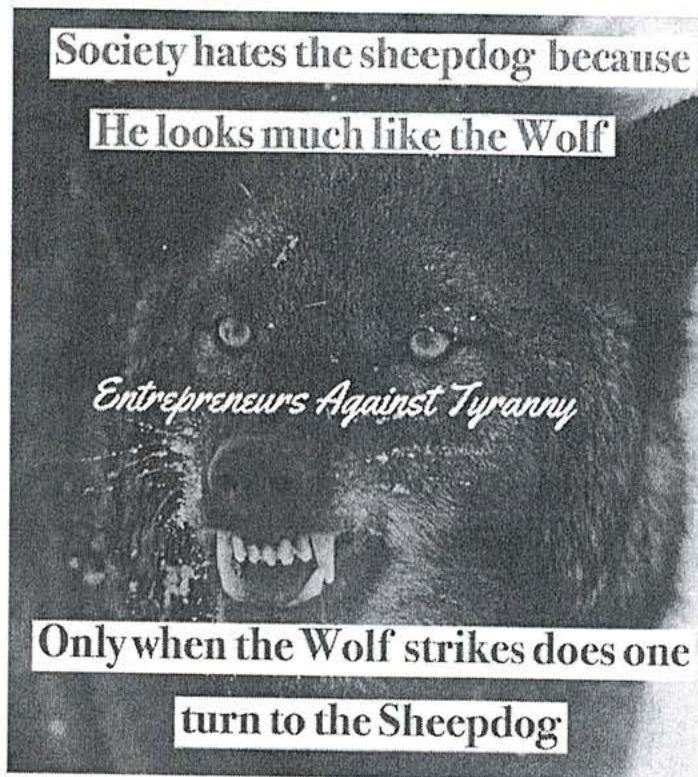
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3 Comments 15 Shares

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Susan Tees-Bowers I am on the Lord's side... E.A.T.

1d

6



Top Fan Vicky Stowe DeVyver Awesome

23h

1

View 1 more comment



E.A.T. August 19 at 12:47 PM ·

Signal Us & We Fight



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131

14 Comments 13 Shares

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Michelle Rachal I thought immediately that this was similar to the bat signal!

19h

2



Jennifer Pershall Horrocks You all ROCK!

1d

1 Reply

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E.A.T August 19 at 9:15 AM ·

Open your businesses....The Farm show a 100+ year tradition and Government doesn't care, you think they care about you?



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Author
E.A.T Anette Witman Love that idea
1d 1

View 1 more reply

Bonnie Oswald-Schaeffer Thats BS.
Love the animals,
But... See More
1d 2

View 15 more comments

E.A.T
August 18 at 11:37 AM

E.A.T Will Be On The Wendy
Bell Show Sunday August 23,
2020 @ 2:00pm

64

6 Comments 38 Shares

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Tracy Goralczyk Woo hoo!!! ill spread the word
2d 2
2 Replies

Terri Waughtel Omgsh that's awesome
2d 3

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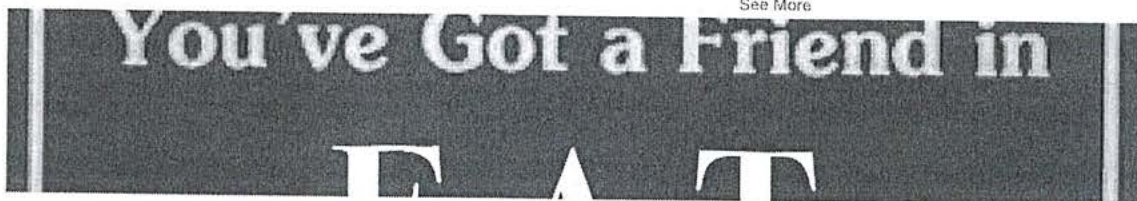
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113 Comments 155 Shares

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Author

E.A.T Here's one of them....more to come



Varangkorn Nakkeow

Environmental Health Specialist at Allegheny County Health Department

3d 12

15 Replies



Melissa Solomon It's funny how overnight these people were trained and out in community. Allegheny county let their residents and businesses down

3d 7



Mike Bro Melissa Solomon because it's mostly Dem

3d 4



Stephen T Roth Melissa Solomon it sad they can not see the harm they are doing as good little soldier in Wolf and Levine army against the talking virus. But the soldiers in Germany also believe they were helping to combat the Typhoid virus at first. A slippery slo... See More

3d 4

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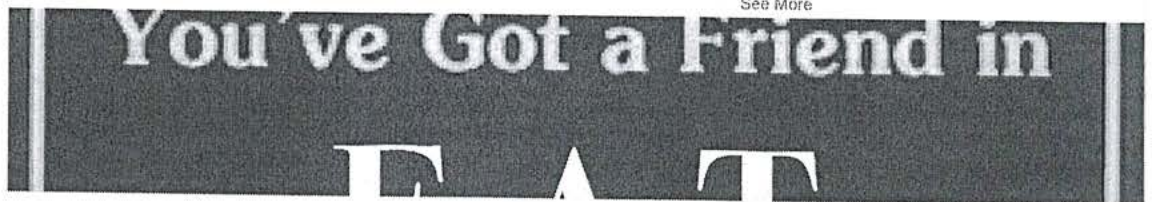


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- 3d 4

Madigan James Bokka What is the process if a business refuses to comply (probably on constitutional grounds)? I'm guessing, fine to start with. REfuse to pay, it keeps going up rapidly with penalties. Eventually a summons to court - ah there's where it could get interest... See More

2 Replies
- 3d 4

Tess Teresa Vedilago How about turning the tables on them and giving the the third degree on why they are doing what they are doing, what's your education, what's your authority hear, have some official Idand video it all.
- 2d 4

Jean Booze What are they charged with??

3d 2

Most Relevant is selected, so some replies may have been filtered out.

Author
E.A.T Jean Booze Exactly

3d 3

View 6 more replies
- Chris Lisa Hawbaker** Stay encouraged and stay open!! It was good meeting you Sat, at Freedom Fest!

3d 12
- Linda Greene** Shame . This is America.

3d 11
- Jim Hrehowsik** When is the rally?

3d 1

View 2 more replies

Author
E.A.T Jim Hrehowsik Amazing!!

3d 2

View 1 more reply
- Rachel Moyer** Why does it take three of them? Couldn't just one person come investigate?

3d 9

6 Replies
- Samuel Lazar** Where is this business? They need support! Address?

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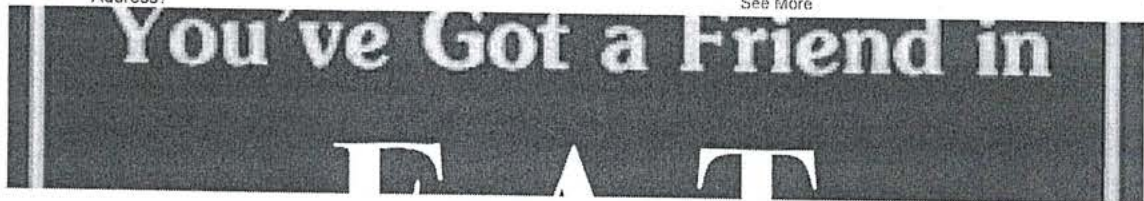
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3d 10
Most Relevant is selected, so some replies may have been filtered out.

Crack'd Egg Crack'd Egg as you can see I wasn't protecting them with wearing a mask...they approached me!
3d 9

View 3 more replies

Joe Mcginley File a suit. You have every right to be open under constitution.
3d 4

Eileen Ritter Gestapo!
3d 8

Brian Burke What exactly is/was their reason ?
3d 4

Hugh Fehrenbacher The next time they walk in. Everyone should just surround them and scream like the liberal wackos do.
3d 7

Scott Hetrick Expose them all !
3d 4

Jared Hessom Do these people look professional at all?
3d 2

Terri Waughtel Stand your ground!
3d 4

Dave Golowski Unbelievable and they look ridiculous to boot
3d 8

1 Reply

TJ Dest They look really healthy.
3d 1

Susan ChattinHoffmann Pos
3d 1

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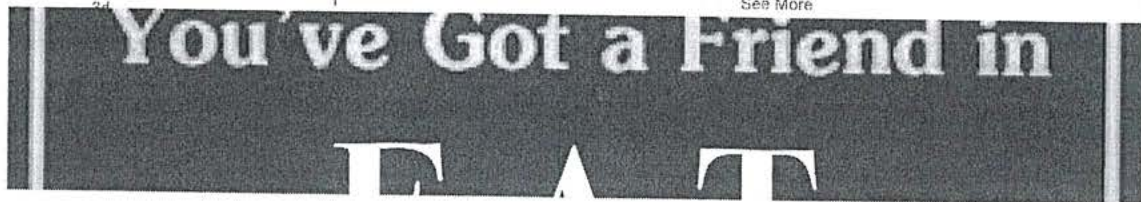
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3d 5

MaryLou Brubaker Go EAT!!!!
3d 2

Beth Annb Stay open!
3d 3

Mike Bro Demsl
3d 1

Jayme Hood AI's cafe and a bunch of others I thought were getting together to fight all this. Maybe contact them to see if you can join forces...
3d 2

2 Replies

Eric Gold not a one of them are social distancing. shame shame
20h

Melissa Ann Grimes They don't look very professional.
3d 4

2 Replies

Salim Milas Businesses in PA need to put notices on their doors regarding these contact tracers. It should be noted that these folks are not permitted on their property, and those who refuse to leave, will be deemed as trespassers.
2d 6

1 Reply

Judy Hartman Do they really dress like that to represent Wolf??? Looks about right to me!
3d 2

Tamara Kuklinski They are dressed like they just crawled out of a dumpster. Not surprised since they are Adolph's cronies
3d 10

1 Reply

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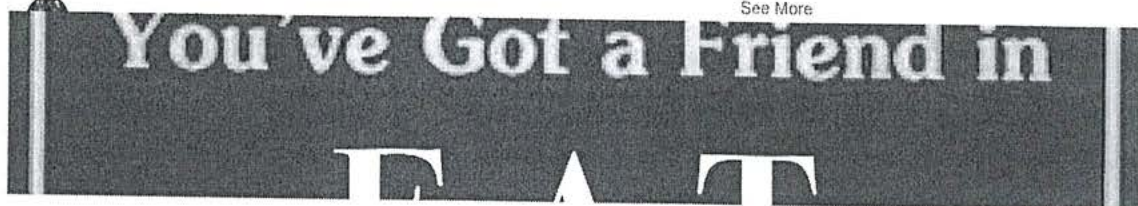
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1 Reply



Steven Kindle Looks exactly like the type of scum that would work for the county. Physiognamy is real.

19h



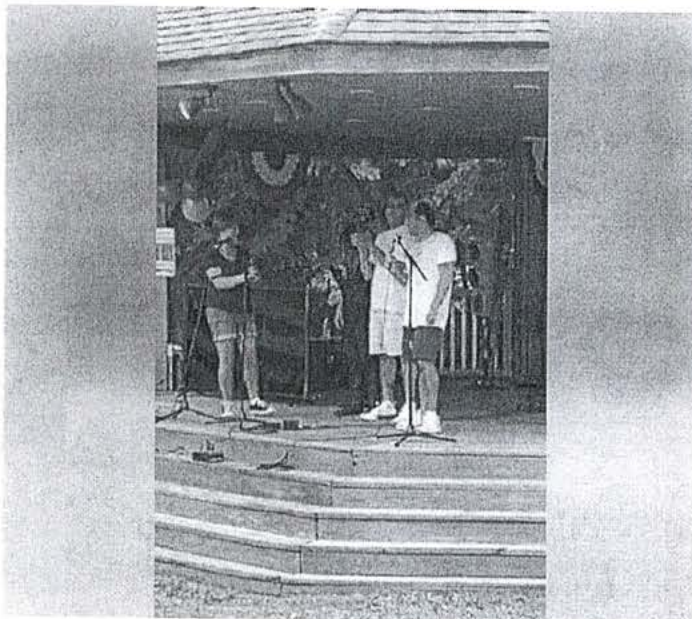
Tracy Shuarts Stephen Godsall follow E A T



E.A.T

August 16 at 9:16 AM

E.A.T Team @ Freedom Fest Aug 15, 2020



6:53

5,200 Views

Dave Golowski

August 16 at 6:53 AM

E.A.T was at Freedom Fest.. and we will be coming to a place near you !! Christian Wartluft Christine Wartluft Matthew Foltz and I are E.A.T

34

1 Comment 3 Shares

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Senator Doug Mastriano

Government Official



Taste Of Sicily

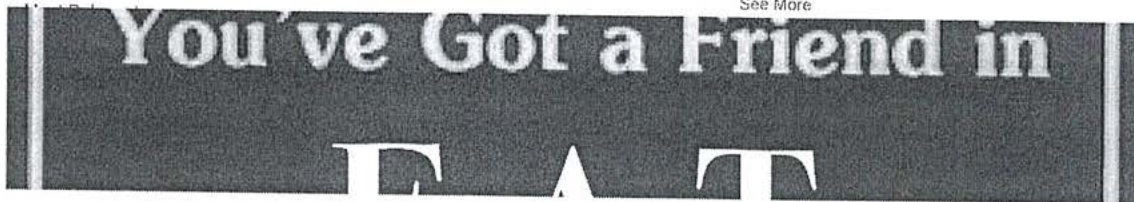
Italian Restaurant



Nicole Fuschino WJAC

Journalist

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E.A.T

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SAT, SEP 12 AT 11:30 AM EDT
Assemble for Freedom 2.0 and 9/11 commemoration

Front Steps of the Pennsylvania State Capitol
 3,058 people interested

68

7 Comments

Like

Comment

Share

Most Relevant



Ryan Shrader That is awesome. My wife and I would love to go.
 Hope it works out for us.

5d



Dave Golowski Sweet , finally we get to meet Wendy Bell

4d



Author

E.A.T Dave Golowski Maybe before that

4d

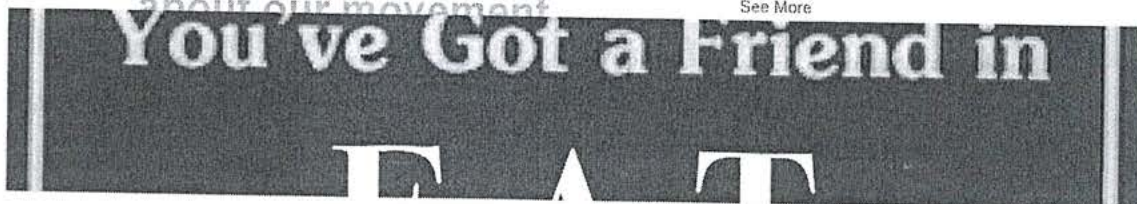
View 2 more comments



E.A.T

August 14 at 9:07 PM ·

E.A.T will go Live from
 Freedom Fest Tomorrow
 We will be speaking briefly
 about our movement



Entrepreneur

Community

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1,750 people like this

1,793 people follow this

About

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Contact E.A.T on Messenger

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Page created - August 5, 2020

People

1,750 likes

Related Pages



Doug Mastriano for Governor 2022
 Political Organization



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Senator Doug Mastriano
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Taste Of Sicily
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 Journalist

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About

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about your group at Freedom Fest! Keep up the good work!
5d

View 1 more comment

E.A.T added an event.
August 13 at 7:08 AM ·



MON, AUG 24 AT 10:00 AM EDT

E.A.T & GREET Crack'd Egg

Crack'd Egg · Pittsburgh, PA

Causes

72

5 Comments

Like

Comment

Share

Vicki AC I like the EAT and Greet. Very clever!
1w

Matthew Foltz replied · 1 Reply

Cindy Coles Come on NEPA,
1w

Susan Tees-Bowers We're comin'!!
1d

E.A.T replied · 1 Reply

E.A.T
August 13 at 6:56 AM ·

Patriots...E.A.T is heading to western Pa August 24, 2020 10:00am Crack'd Egg In Brentwood...Come out and have breakfast w/ the E.A.T and help us relaunch another amazing PA business...See you there!!



Entrepreneur

Community

See All

1,750 people like this

1,793 people follow this

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Page created - August 5, 2020

People

1,750 likes

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65

48 Shares

Like

Comment

Share



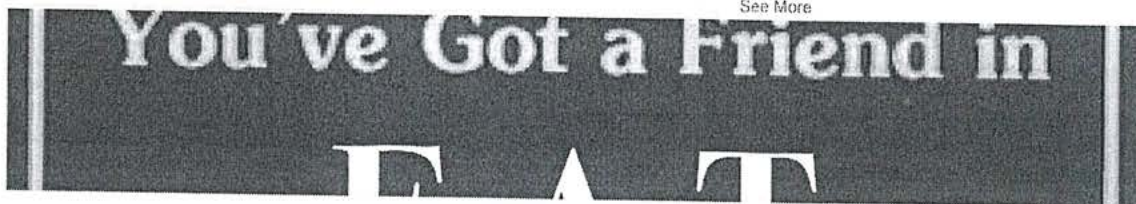
E.A.T

August 12 at 7:20 PM ·

Would Any Videographer Like To Volunteer To Capture & Film E.A.T Events? PM If Interested

9

6 Comments 12 Shares



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Entrepreneur

Community

See All

1,750 people like this

1,793 people follow this

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Page created - August 5, 2020

People

1,750 likes

Related Pages



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Government Official



Taste Of Sicily
Italian Restaurant



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Journalist

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GIPHY

6d

[See More](#)

Most Relevant is selected, so some comments may have been filtered out.

E.A.T

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👍 1,750 people like this

📡 1,793 people follow this

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Page created - August 5, 2020

People

1,750 likes

Related Pages



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Government Official



Taste Of Sicily
Italian Restaurant



Nicole Fuschino WJAC
Journalist

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The Crack'd Egg & Our Team need to have our breakfast packed out on Monday August 24 2020. The Big Bad Wolf Knows We Are Coming...If You Love Pa Like We Know You Do, Spread The Word!! We Are Not Afraid....E.A.T Is Still Coming!!!!



RICH FITZGERALD
COUNTY EXECUTIVE

August 21, 2020

The Crack'd Egg LLC
2924 Custer Avenue
Pittsburgh, PA 15227

RE: Intent to Operate
Client ID#: 201510290005
The Crack'd Egg
4131 Brownsville Road
Brentwood

Dear Kimberly and Don Waigand,

It has come to the attention of the Allegheny County Health Department (ACHD) Food Safety Program that your establishment may have plans to operate on Monday, August 24, 2020 despite the ACHD closure orders issued on 08/11/2020. As you will remember, opening your establishment for operations would place your establishment in noncompliance with the following requirements of Article III, Food Safety Rules and Regulations.

- Section 337.1: If the Director finds there is imminent danger to the public health the permit shall immediately be suspended...A person whose permit has been suspended shall have the permit reinstated upon completion of the corrective action required by the Director and an inspection verifying such corrections. It shall be unlawful to operate a food facility with a suspended permit.
- Section 330.1 (B): Only persons who comply with all applicable Department Rules and Regulations, State and Federal Laws shall be entitled to receive and retain such a permit.

The ACHD Food Safety Program is requesting your cooperation in avoiding the noncompliant reopening activity listed above upon receipt of this letter. Please be advised that if you do not comply, the ACHD Food Safety Program may conduct an on-site investigation of your business and take further action, which may include civil penalties and permit revocation.

Thank you for your attention to this matter

If you have any questions, please contact this office at 412-578-8044.

Sincerely,

Amanda Mator
Program Operations Manager



DEBRA BINGEN, MD, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
FOOD SAFETY PROGRAM
3901 PENN AVENUE • BLDG 6292 1 • PITTSBURGH, PA 15224-1316
PHONE: 412-578-8044 • FAX: 412-578-8102
WWW.ALLEGHENYCOUNTYPAHEALTHDEPARTMENT



95

67 Comments 56 Shares

Share

Most Relevant

Rachael Vermeulen I want to be there so bad to stand up for them...I wish it wasnt so far away...Ill be there in spirit for support!!

3h

6

Jan Hall Savko Amazing how fast good news travels!! Gotta love it. Either a mole or smoke signals?!

Related Pages

- Doug Mastriano for Governor 2022
Political Organization
- PA State Rep. Russ Diamond
Government Official
- Senator Doug Mastriano
Government Official
- Taste Of Sicily
Italian Restaurant
- Subtle Beast Podcast
Journalist
- Nicole Fuschino WJAC
Journalist
- Gumbas
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- PA State Rep. Valerie Gaydos
Government Official
- In The Trenches with Teddy Dani...
Podcast
- Atlantic Tackle
Fishing Store
- Heather Heidelbaugh for Att...
Politician
- WMSS 91.1 FM
Radio Station

Recent Post by Page




See more of E.A.T on Facebook


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- 1h

 **Ryan Shrader** You are doing good things for our businesses in PA. God bless you this weekend.


3h 10
-  **Dara Christian-Pegher** Tell them it's a car show, everything should be okay!!!


3h 17


Most Relevant is selected, so some replies may have been filtered out.


 **Author**
E.A.T Dara Christian-Pegher It's an EAT In...protest against Gov's orders...can't break up a protest!!


3h 12

[View 5 more replies](#)
-  **Salim Milas** Open up, 100%!! It's about time we start defying these unreasonable, draconian, needlessly perpetuated, and insidious restrictions from Governor Wolf and his drag-queen sidekick!!


3h · Edited 13
-  **Dave Golowski** More scare tactics to make sure they stay in check with the Dictator Wolf !! So now they threaten them with sending in the sumo wrestler

3h 6
-  **Christine Wartluft** I HAVE ONE OF THOSE... STAY OPEN


1h 2
-  **Kim Marrone** I wish I could be there to support them... OPEN UP STAY OPEN.. Wolf and Levine's credibility was tossed out the window months ago!!


1h 1
-  **Terri Waughtel** I'll be peacefully protesting this letter with a forkful of Freedom French Toast in my mouth


2h 5

[1 Reply](#)
-  **Racheal Mae** This just goes to prove there are snitches out among us.

3h 3

[1 Reply](#)
-  **Jennifer Kleckner** Everyone park your cars nicely in the parking lot and lift your hoods. GO GET'EM . Wish this wasn't so far from me.

3h · Edited 7
-  **Jessey Cole Kessler** Wish I could be there. Unfortunately have to work, but will be praying over you all!!

3h 1
-  **Ron Price** Just tell them it's a protest

2h 1

have our breakfast packed out on ...
See More

95 67 Comments 56 Shares

Share

 **E.A.T**
Today at 9:42 AM

Crack'd Egg has some amazing breakfast specials for Monday Aug 24, 2... See More

70 17 Comments 18 Shares

Share

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8/21/2020

5 Replies



Lisa LaBarko Walkowski Its a peaceful breakfast protest!

3h 6



Deborah A. Poust Go getum E.A.T your not afraid of the big bad wolf you have my support 110%

3h 4



Robyn Klose Yocum Unfortunately I can't make it but I did share!

3h 1

1 Reply



Ryan Shrader Make sure you tell the governors goons to get a life and leave the good people alone and let them walk as free people.

3h 5

2 Replies



Patty Kish-Sanderson Brownsville rd.?

1h 2

2 Replies



Judy Hartman Ridiculous! I wonder if we will be on tv?

1h 2

6 Replies

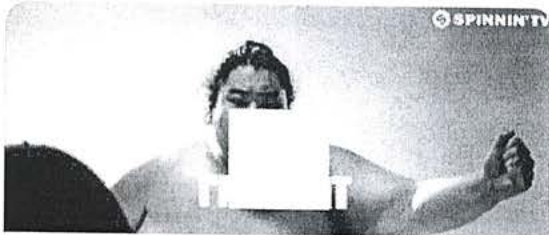


Kimberly Hall Praying

3h 1



Dave Golowski



GIPHY

3h 3



Kim Shade Adornetto This is total bullshit! I hope this establishment sues the hell out of this administration when this is all over!

2h 5

1 Reply



Matthew Foltz For all that come out to breakfast, I have a handful of "Walk As Free People" bracelets and these amazing stickers provided & created by Amber Paxton

See more of E.A.T on Facebook

Log in

or

Create New Account

8/21/2020



3h

[View 3 more replies](#)



Author

E.A.T Teresa Montecalvo Coppola Twice in a week...how lucky am I?!?! It!!

2h

[View 4 more replies](#)

Most Relevant is selected, so some comments may have been filtered out.

See more of E.A.T on Facebook

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or

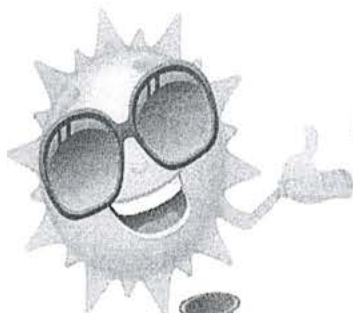
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8/24/2020

(20+) Facebook



20+



E.A.T. & Greet @ the Egg
Monday August 24th
The E.A.T. team here @ 10am



Freedom French Toast 3 Pieces of French Bread dipped in a Red Velvet Egg Mixture topped with a Vanilla Cream Sauce and Berries. Served with PA Amish Bacon. 7.99

Caprese Omelet This Caprese Omelet is filled with Balsamic Drenched Tomatoes, Spinach & Mozz/ Topped with Basil Pesto. Served with choice of Breakfast Potato and Toast. 8.99

Taste of Sicily Scramble 3 Eggs Scrambled with Ham, Pepperoni, Potatoes, Mozz and Parm Cheeses. Served with a Side of The Gumbas Sauce and your choice of Toast. 8.99 (available after 10am)

E.A.T. Breakfast Croissant Egg, American Cheese, Turkey Sausage Patty on a Buttery Flaky Croissant. Served with a side of Fresh Cut Freedom Fries. 6.99

"What nicer thing can you do for somebody than to make them breakfast?"

Anthony Bourdain

Like · Reply · 17h

1



Karen Bauer

Welcome back, hope to see you. Good luck

1

Like · Reply · 16h



Chad Ringbloom

I really wish I could be there but I'm out of vacation time. We'll be there whenever you guys are open on a weekend

Like · Reply · 17h

1



Roberta Loadman

Wish we could be there too good luck

Like · Reply · 13h

1



Mike Rutkowski

You guys opening back up?!

Like · Reply · 18h

1



Author

Crack'd Egg



Write a comment...

8/24/2020

(20+) Facebook

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

August 21, 2020

The Crack'd Egg LLC
2924 Custer Avenue
Pittsburgh, PA 15227

RE: Intent to Operate
Client ID#: 201510290005
The Crack'd Egg
4131 Brownsville Road
Brentwood

Dear Kimberly and Don Waigand,

It has come to the attention of the Allegheny County Health Department (ACHD) Food Safety Program that your establishment may have plans to operate on Monday, August 24, 2020 despite the ACHD closure orders issued on 08/11/2020. As you will remember, opening your establishment for operations would place your establishment in noncompliance with the following requirements of Article III, Food Safety Rules and Regulations:

- **Section 337.1:** If the Director finds there is imminent danger to the public health the permit shall immediately be suspended...A person whose permit has been suspended shall have the permit reinstated upon completion of the corrective action required by the Director and an inspection verifying such corrections. It shall be unlawful to operate a food facility with a suspended permit.
- **Section 330.1 (B):** Only persons who comply with all applicable Department Rules and Regulations, State and Federal Laws shall be entitled to receive and retain such a permit.

The ACHD Food Safety Program is requesting your cooperation in avoiding the noncompliant reopening activity listed above upon receipt of this letter. Please be advised that if you do not comply, the ACHD Food Safety Program may conduct an on-site investigation of your business and take further action, which may include civil penalties and permit revocation.

Thank you for your attention to this matter.

If you have any questions, please contact this office at 412-578-8044.

Sincerely,

Amanda Mator
Program Operations Manager



DEBRA BOGEN, MD, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVENUE • BUILDING 1 • PITTSBURGH, PA 15224-1318

PHONE: 412.578.8044 • FAX: 412.578.8190

WWW.ALLEGHENYCOUNTY.US/HEALTHDEPARTMENT





MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood

This office received information that the subject facility plans to reopen today Monday 8/24/2020.

I contacted EHSII Patrick Kapfhammer and together, we drove by this facility several times between 10:36 AM and 11:05 AM.

The Red, "CLOSED" Achd placard was intact on the front door.

The facility found open and operating.

There were several customers eating.

One female server taking orders- No mask or other face covering.

One male employee serving food – No mask or other face covering.

One greeter by the front door- No mask or other face covering.

Two female customers standing at the patio- No mask or other face covering.

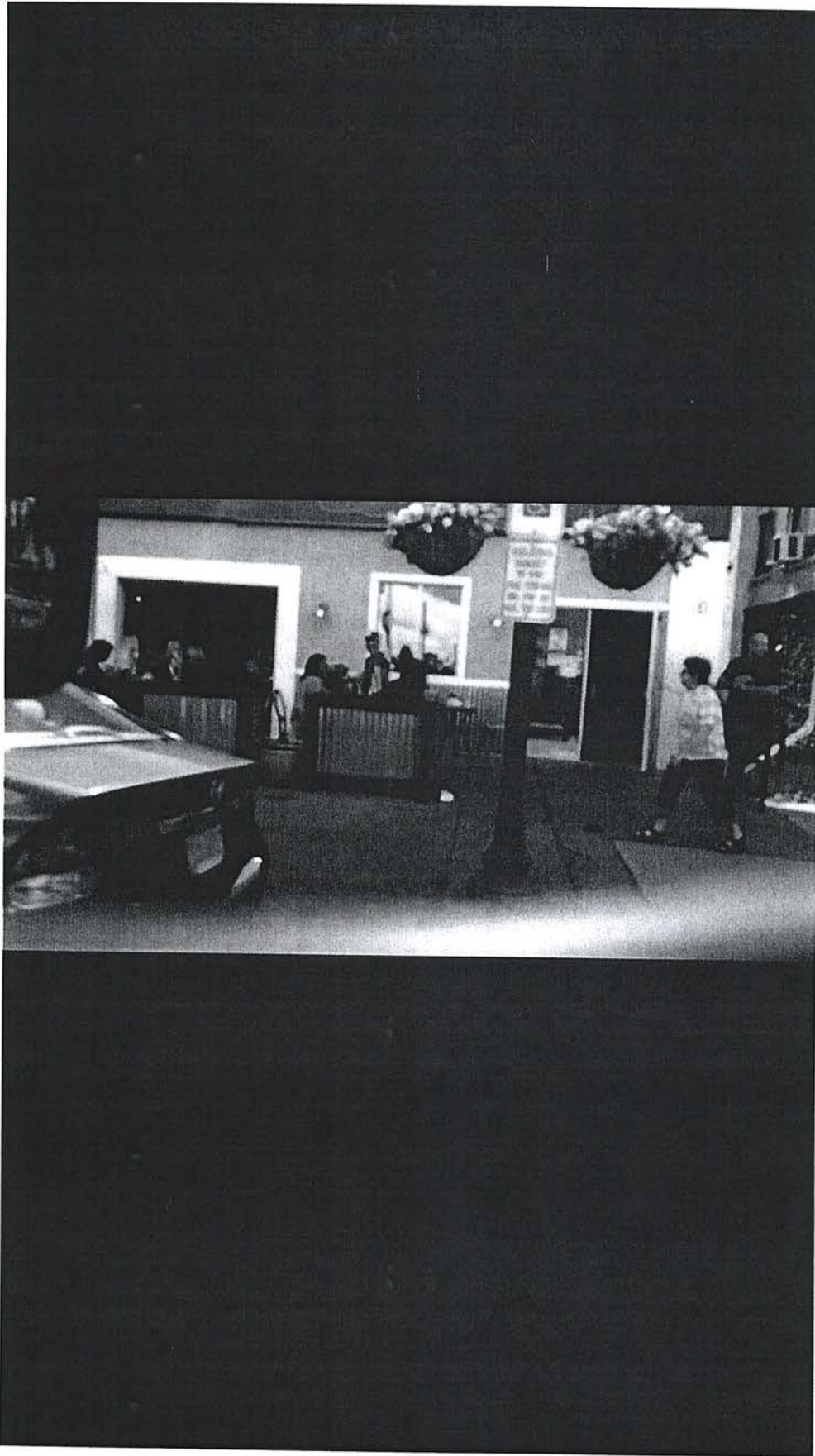
As a reminder, this facility was ordered closed on 8/11/2020 for failure to operate under the current mask/ facial covering guidelines.

Costis Angel
E.H. Supervisor

Pictures attached – also uploaded on the enforcement folder.











Completed By: **C. Angel**

Date: 8/24/2020



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood

Compliance Check Tuesday August 25, 2020

I drove by this facility several times between 7:51 AM and 7:57 AM.

The Red, "CLOSED" Achn placard was intact on the front door.

The facility found open and operating.

There was at least one customer eating at the front counter.

One female server - No mask or other face covering.

One male employee – No mask or other face covering

As a reminder, this facility was ordered closed on 8/11/2020 for failure to operate under the current mask/ facial covering guidelines.

Costis Angel
E.H. Supervisor

Pictures attached – also uploaded on the enforcement folder.

cricket LTE

7:58 AM

61%



Today
7:57 AM

All Photos



Edit





cricket

7:53 AM

61%



Today
7:51 AM

All Photos



Edit



Completed By: C. Angel

Date: 8/25/2020



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood

Compliance Check Wednesday, August 26, 2020

I drove by this facility several times between 1:10 PM AM and 2:20 PM

The Red, "CLOSED" Achd placard was concealed- took picture(s).

The facility was open and operating.

There were three customers seating and eating outside.

As a reminder, this facility was ordered closed on 8/11/2020 for failure to operate under the current mask/
facial covering guidelines.



Placard
concealed
with a sign

cricket

8:19 PM

89%



Today
1:13 PM

All Photos



Edit



Costis Angel
E.H. Supervisor

Pictures attached – also uploaded on the enforcement folder.

Completed By: **C. Angel**

Date: **8/26/2020**



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg, Brentwood

Compliance Check Wednesday, August 27, 2020

I drove by this facility twice between 8:00 AM and 8:05 AM.

The Red, "CLOSED" Achd placard was concealed- took picture(s).

The facility was open and operating.

There was one customer seating and eating outside.

As a reminder, this facility was ordered closed on 8/11/2020 for failure to operate under the current mask/
facial covering guidelines.

cricket

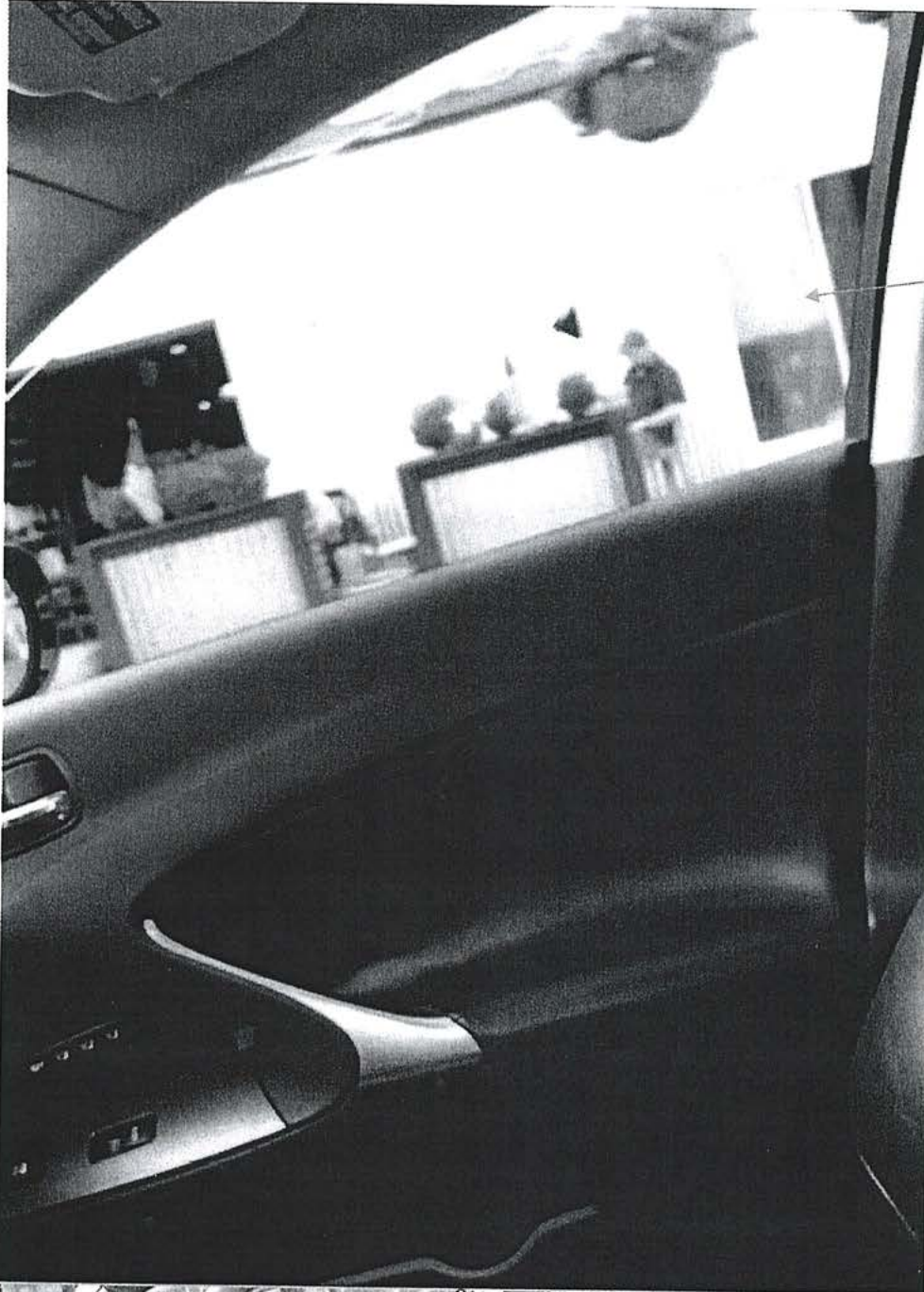
8:00 AM

61%



Today
7:58 AM

All Photos

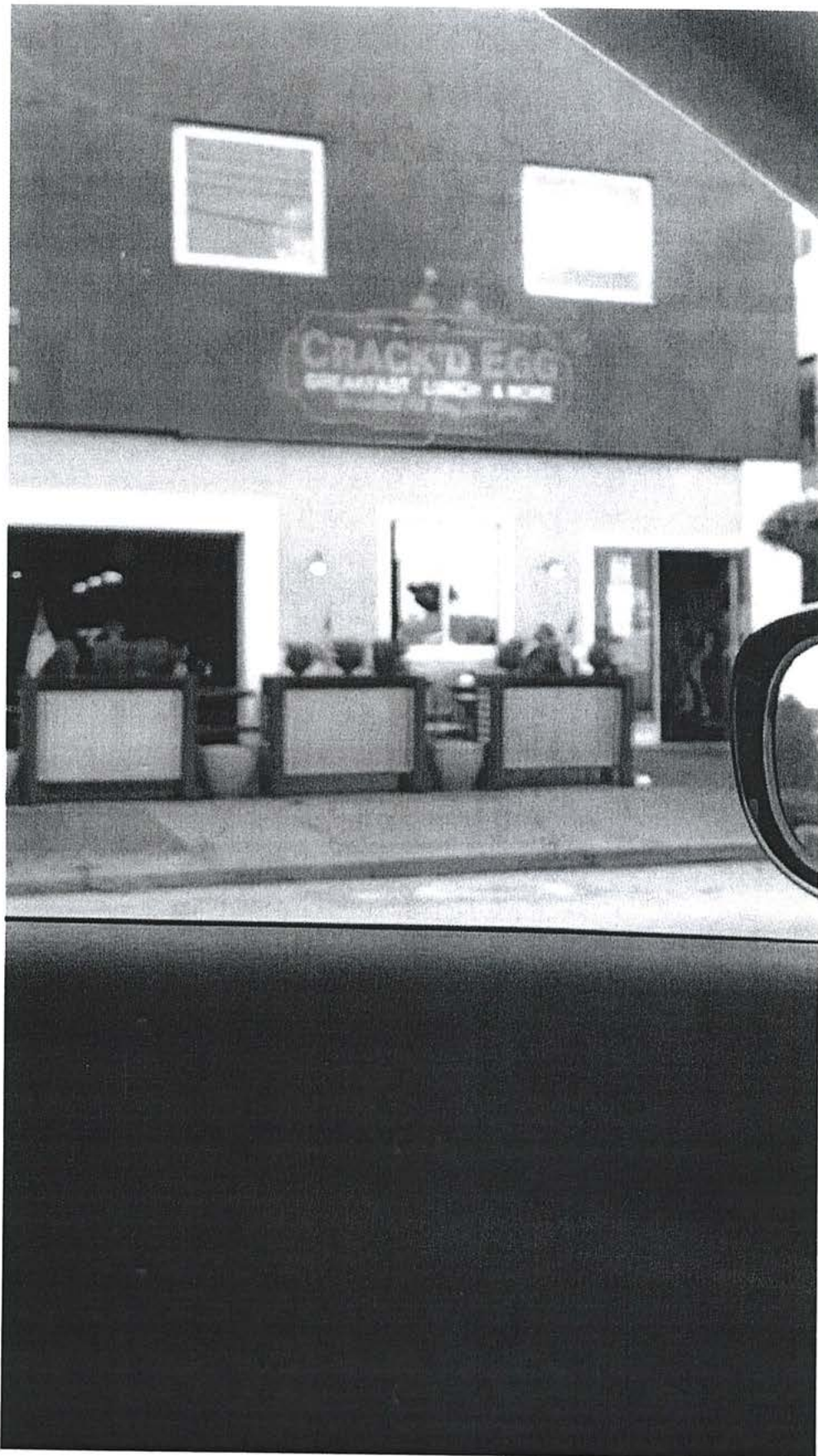


Placard
Concealed
8/27/2020



Edit





Costis Angel
E.H. Supervisor

Pictures attached – also uploaded on the enforcement folder.

Completed By: **C. Angel**

Date: **8/27/2020**



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood

Compliance Check Wednesday, August 28, 2020

I drove by this facility at 8:00 AM

The Red, "CLOSED" Acd placard was still concealed- took picture(s).

The facility was open and operating.

There were two customers eating outside.

As a reminder, this facility was ordered closed on 8/11/2020 for failure to operate under the current mask/facial covering guidelines.

Costis Angel
E.H. Supervisor


Pictures attached – also uploaded on the enforcement folder.

Completed By: C. Angel

Date: 8/28/2020

cricket LTE

8:02 AM

88% 



Today
8:01 AM

All Photos



Placard
concealed
with a sign



Edit



Completed By: C. Angel

Date: 8/28/2020



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood

Compliance Check Tuesday August 31, 2020

I drove by this facility at 8:05 AM.

The Original red, "CLOSED" Achd placard was missing.

The second "CLOSED" placard posted by the local supervisor on the front door on 8/28/2020 had also been removed.

The facility found open, however there were no customers sitting outside (61F - Cloudy).

One male server - No mask or other face covering.

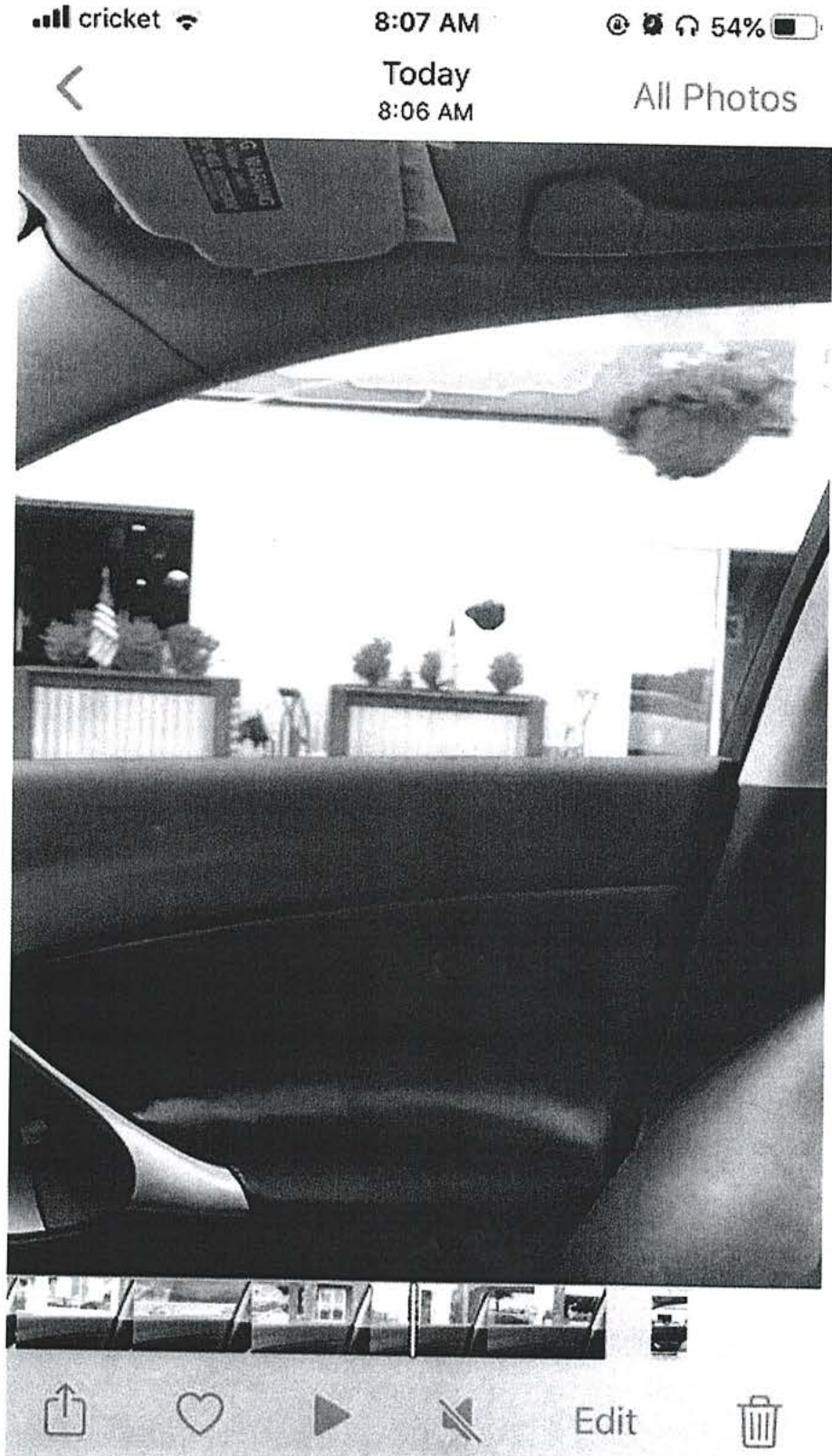
As a reminder, this facility was ordered closed on 8/11/2020 for failure to operate under the current mask/facial covering guidelines.

Costis Angel
E.H. Supervisor

Pictures attached –



2nd
Placard
removed



Completed By: **C. Angel**

Date: 8/31/2020



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood 9/1/2020

I drove by this facility at 8:10 AM
The facility was open and operating.
There was No "CLOSED" Achd placard at the door.
Picture attached.



Completed By: **C. Angel**

Date: 09/01/2020

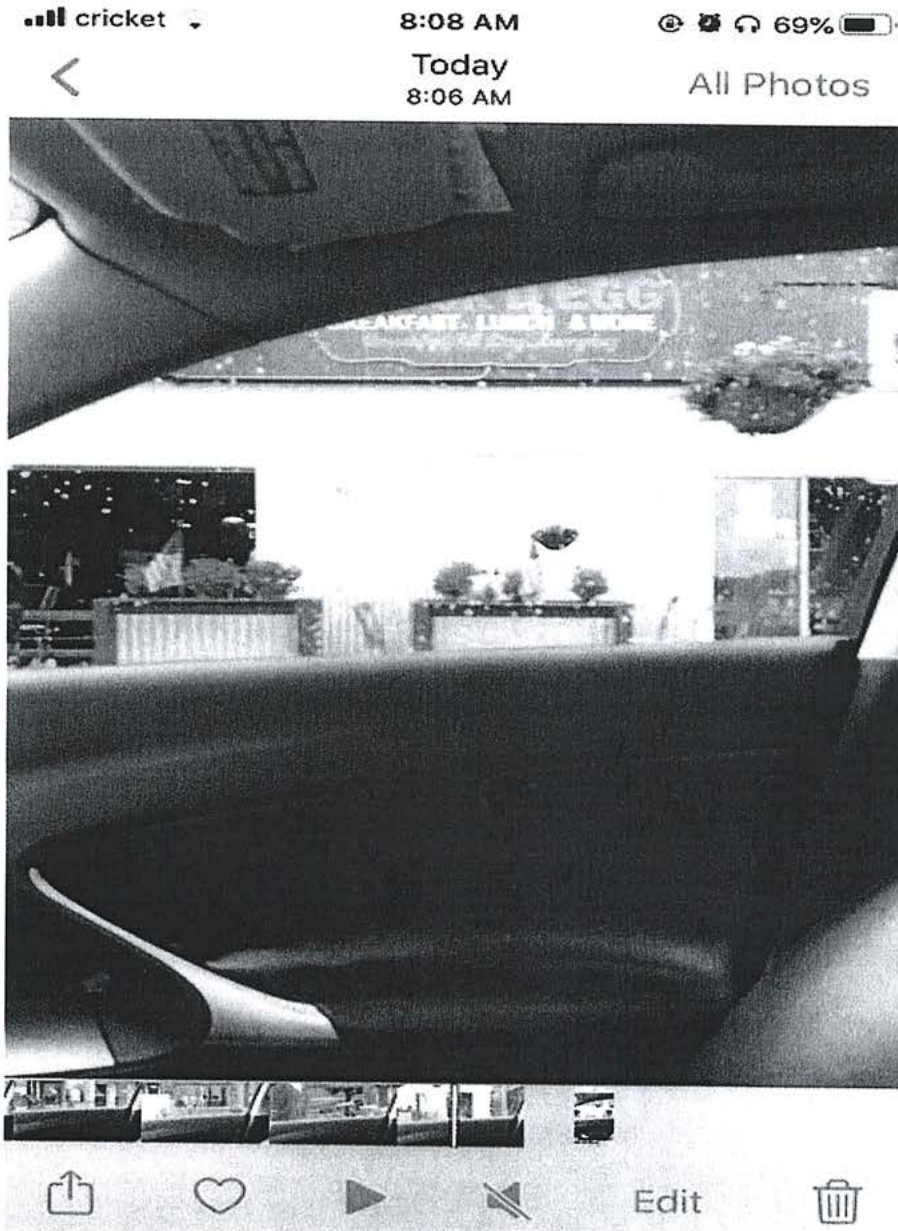


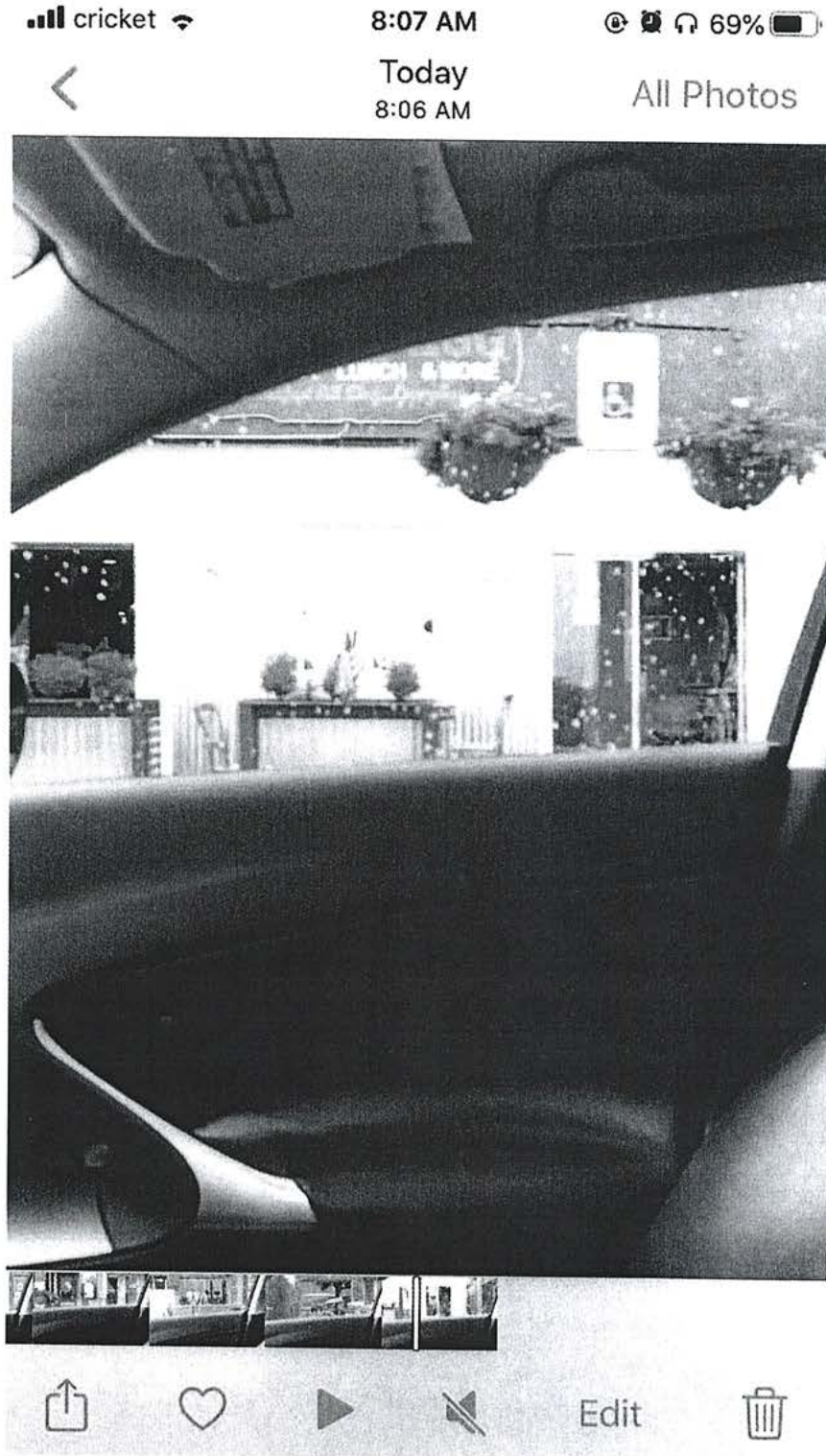
MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood 9/2/2020

I drove by this facility at 8:05 AM
The facility was open and operating.
There was No "CLOSED" Achd placard at the door.
Picture attached.





Completed By: C. Angel

Date: 09/02/2020



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood 9/3/2020

I drove by this facility at 8:25 AM
The facility was open and operating.
Observed 3- 4 customers without masks sitting at the front counter.
There was No "CLOSED" Achd placard at the door.
Picture attached.

cricket

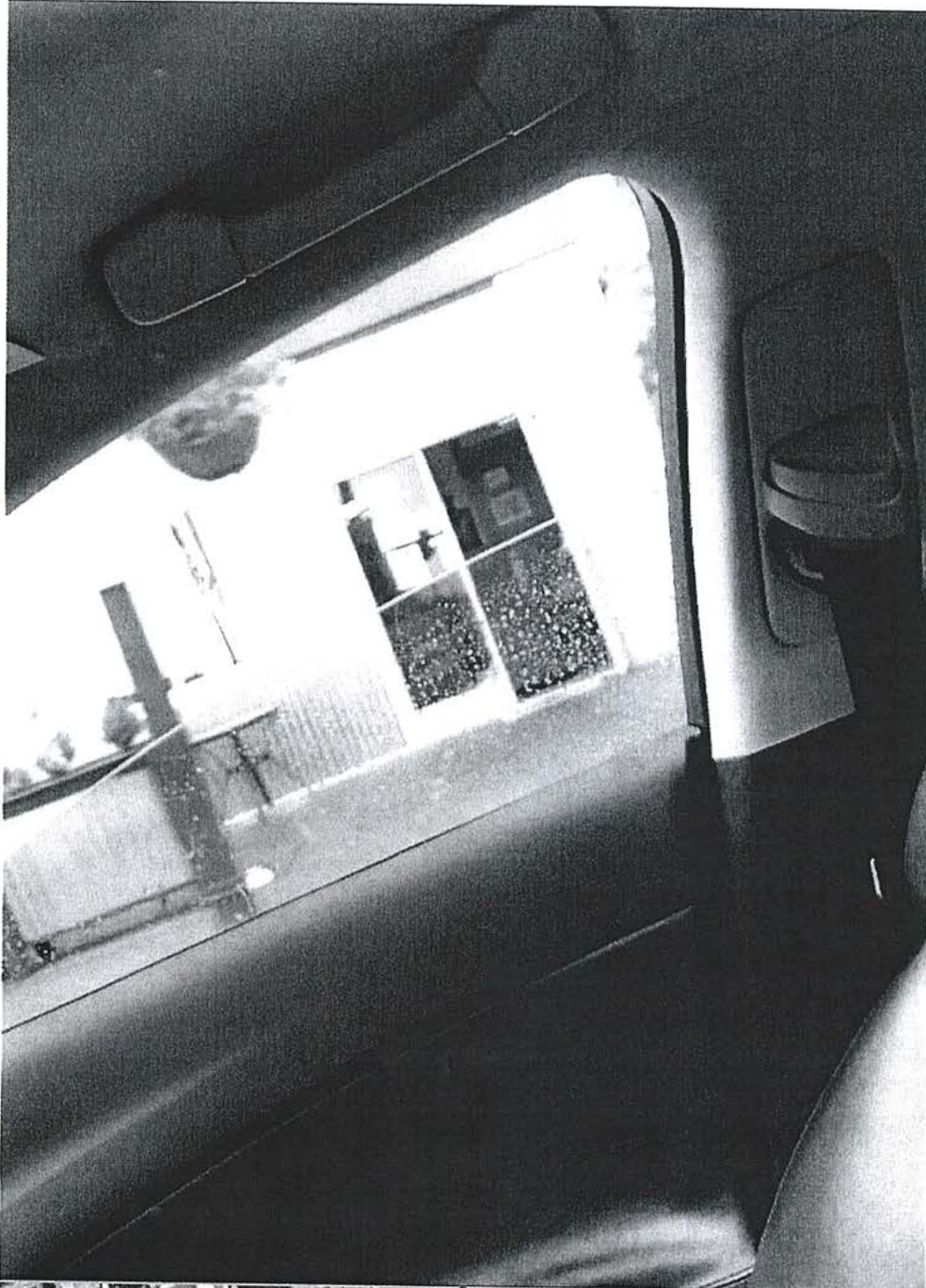
8:27 AM

93%



Today
8:26 AM

All Photos



Edit



cricket

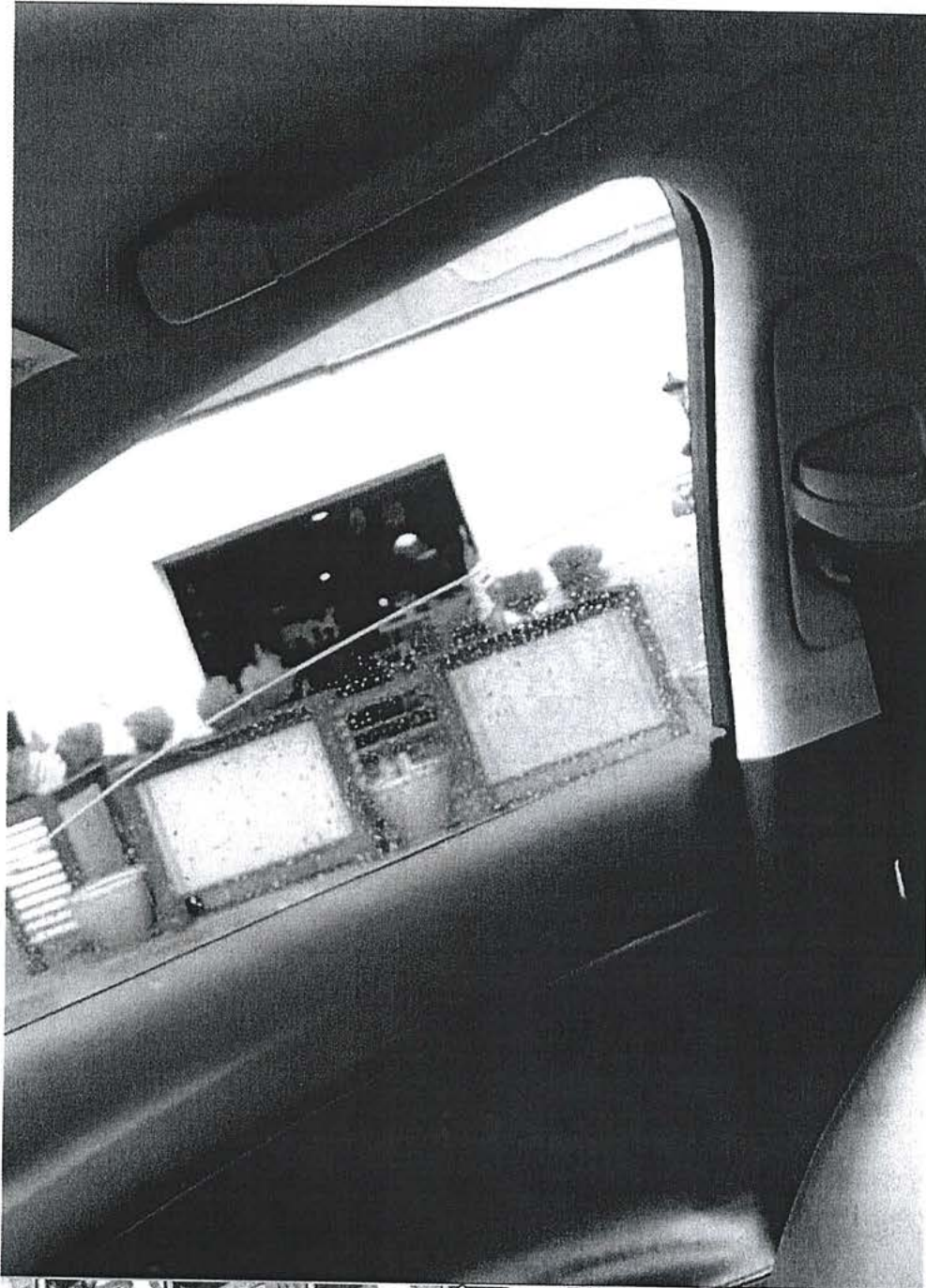
8:28 AM

93%



Today
8:26 AM

All Photos



Edit



cricket

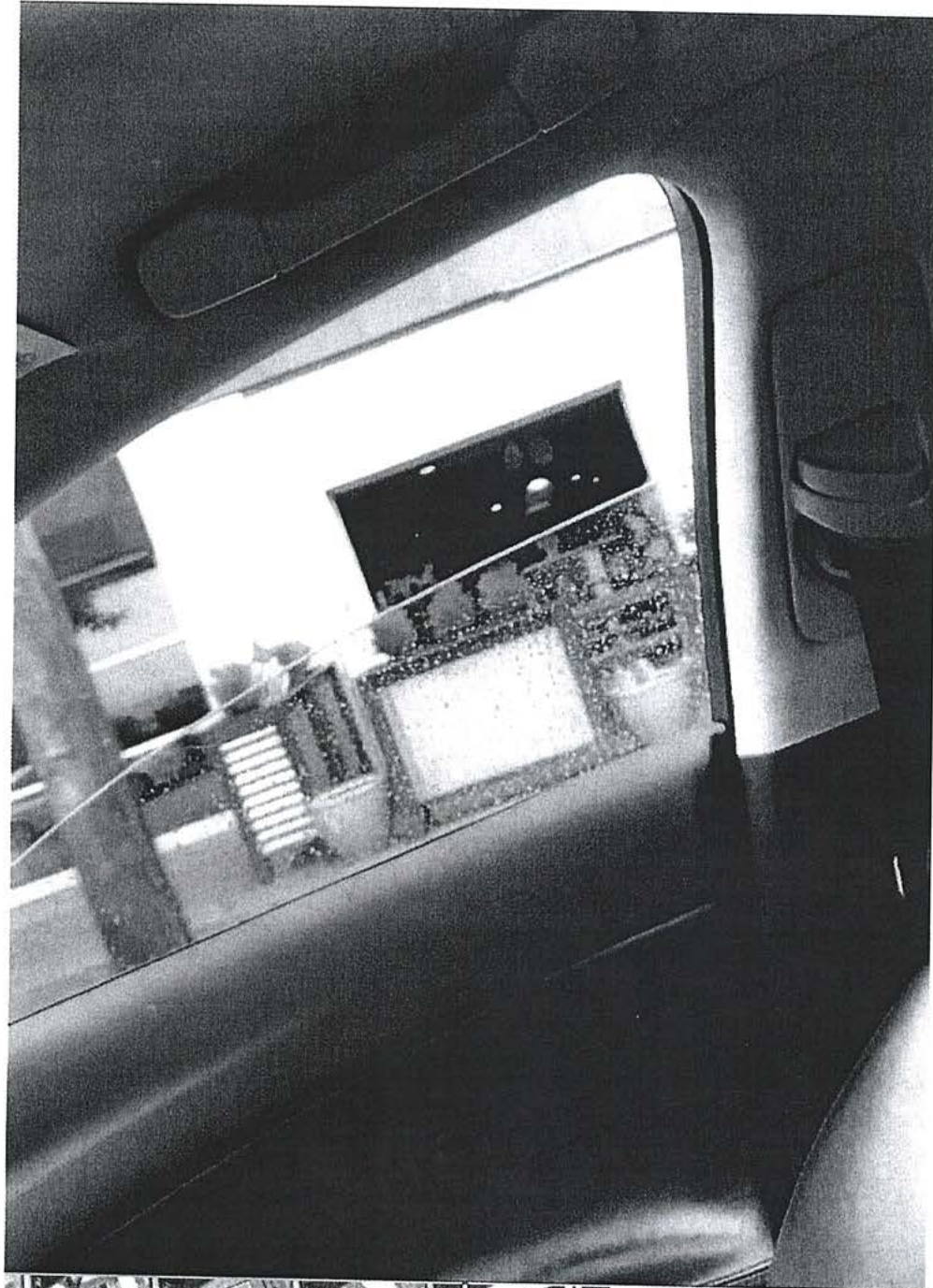
8:28 AM

93%



Today
8:26 AM

All Photos



Edit



Completed By: **C. Angel**

Date: **09/03/2020**



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood 9/4/2020

I drove by this facility at 8:10 AM

The facility was open and operating.

Observed a recent bread delivery still sitting on a table by the left garage door.

There was No "CLOSED" Achd placard at the door.

Picture attached.

cricket

8:08 AM

70%



Today
8:07 AM

All Photos



Edit



cricket

8:08 AM

70%



Today
8:07 AM

All Photos



Edit



Completed By: **C. Angel**

Date: 09/04/2020



MEMORANDUM TO FILE

Re: Crack'd Egg 4131 Brownsville Rd Pittsburgh PA 15227 CID: 201510290005

RE: Compliance Check Crack'd Egg Brentwood 9/10/2020

I drove by this facility at 8:10 AM
The facility was open and operating.

There was No "CLOSED" Achd placard at the door.
Picture attached.

cricket

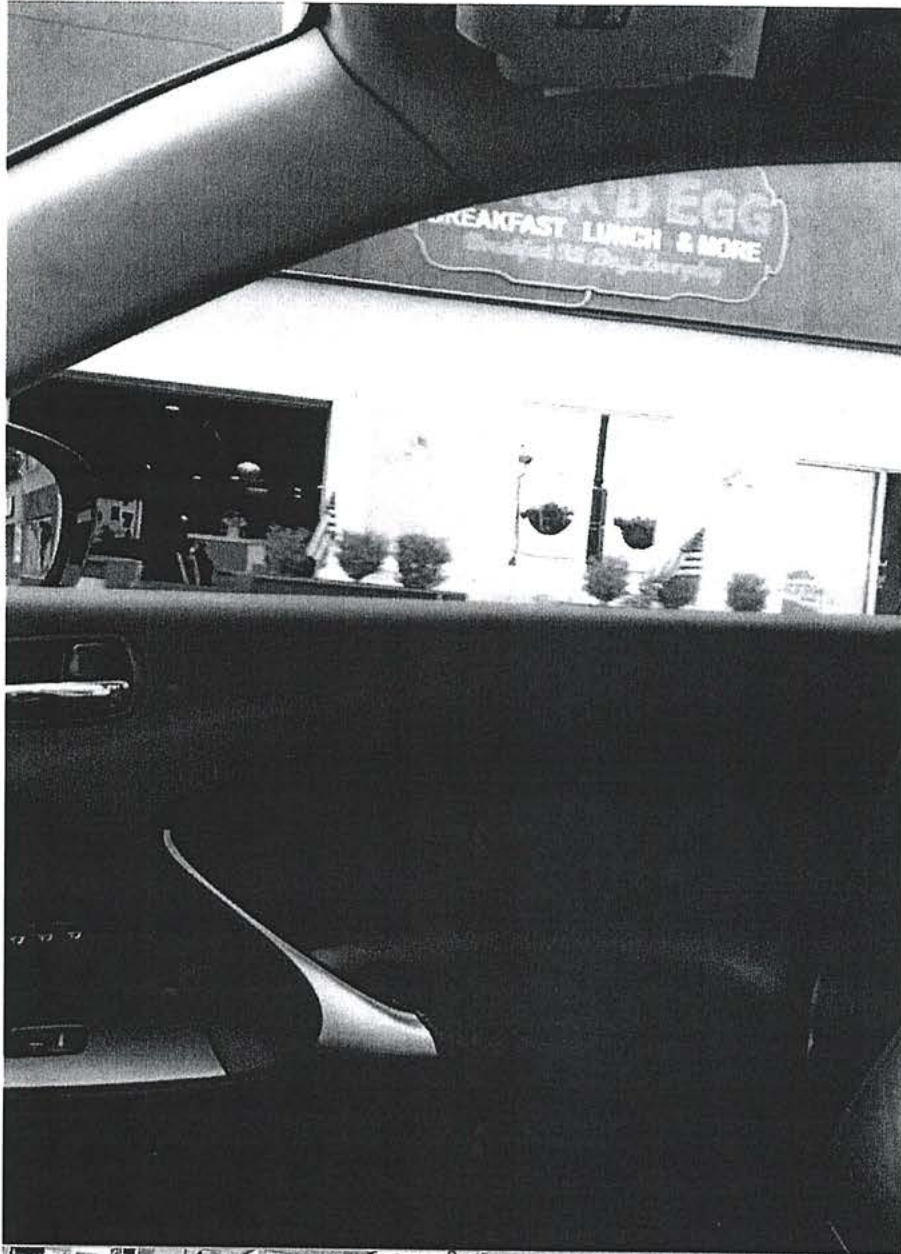
8:09 AM

92%



Today
8:08 AM

All Photos



Edit

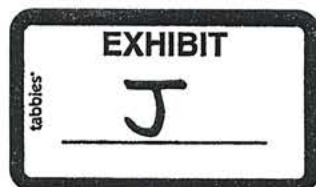




Recent social Media posts indicate that the person(s) responsible for this food facility intend to continue to operate indefinitely.

Completed By: **C. Angel**

Date: **09/10/2020**





**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:)	
)	
THE CRACKED EGG, LLC.,	)	Bankruptcy No. 20-22889-JAD
)	
Debtor.	)	Chapter 11
	X	
)	
COUNTY OF ALLEGHENY, a	)	Related to ECF No. 47
political subdivision of the)	
Commonwealth of Pennsylvania,)	
)	
Movant,)	
)	
- v -)	
)	
THE CRACKED EGG, LLC,)	
)	
Respondent.)	
	X	

ORDER GRANTING MOTION FOR RELIEF FROM AUTOMATIC STAY

The matter before the Court is a Motion for Relief From Automatic Stay filed by the County of Allegheny, through the Allegheny County Health Department (collectively, the “Movant”).

For the reasons set forth in the Memorandum Opinion issued on this date, the Court hereby ORDERS, ADJUDGES and DECREES that:

1. The Motion for Relief From Automatic Stay is granted.
2. The Movant may proceed with its actions against the Debtor in the following docket numbers: Adversary No. 20-02166-JAD before this Court and, upon remand, GD-20-9809 before the Court of Common Pleas of Allegheny County.

- 3. The Movant may also defend the action filed by the Debtor against the Movant at docket number 2:20-cv-01434-RJC before the United States District Court for the Western District of Pennsylvania.

Date: January 7, 2021



pgc
The Honorable Jeffery A. Deller
United States Bankruptcy Judge

cc: James R. Cooney, Esq., counsel to the Debtor
Viyalakshmi Patel, Esq., counsel to the County of Allegheny

FILED
1/7/21 11:12 am
CLERK
U.S. BANKRUPTCY
COURT - WDPA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:)	
)	
THE CRACKED EGG, LLC.,	)	Bankruptcy No. 20-22889-JAD
)	
Debtor.	)	Chapter 11
_____	X	
)	
COUNTY OF ALLEGHENY, a	)	Related to ECF No. 47
political subdivision of the)	
Commonwealth of Pennsylvania,)	
)	
Movant,)	
)	
- v -)	
)	
THE CRACKED EGG, LLC,)	
)	
Respondent.)	
_____	X	

MEMORANDUM OPINION

The matter before the Court is a Motion for Relief From Automatic Stay filed by the County of Allegheny, through the Allegheny County Health Department (collectively, the “County Health Department”). The Motion for Relief From Automatic Stay is a core proceeding over which this Court has the requisite subject-matter jurisdiction to enter final judgment pursuant to 11 U.S.C. §§ 157(b)(1), 157(b)(2)(A), 157(b)(2)(G), 157(b)(2)(O), and 1334(b).

The gist of the motion filed by the County Health Department is that this agency requests relief from stay to pursue enforcement proceedings against The Cracked Egg, LLC (the “Debtor”) for violation of various mitigation measures

ordered by the Commonwealth of Pennsylvania to protect against the spread of Covid-19.

By way of background, Covid-19 is a highly infectious, communicable disease caused by a new (or novel) coronavirus not previously seen in humans. The Covid-19 virus is transmitted predominantly by respiratory droplets generated when people cough, sneeze, talk or breathe. See M.Rae, Inc. v. Wolf, Civil Action No. 1:20-CV-2366, 2020 WL 7642596, at *7 (M.D. Pa. Dec. 23, 2020). It is widely accepted in the scientific community that masks help contain the spread of the Covid-19 virus by reducing transmission of those droplets. Id. It has also been reported that “[i]ndoor venues, where distancing is not maintained and consistent use of masks is not possible (e.g., restaurant dining) have been identified as particularly high risk scenarios” for virus transmission. Id.

Covid-19 has “caused a global pandemic of unprecedented scale.” Id. at *1. As of December 23, 2020, the World Health Organization reported 76,858,506 confirmed cases and 1,711,498 deaths worldwide. Id. at *4. The Centers for Disease Control and Prevention (the “CDC”) reported 18,170,062 cases and 321,734 deaths in the United States. Id. As of late December of 2020, the Commonwealth of Pennsylvania Department of Health recorded 581,156 cases and 14,442 deaths. Id.

The pandemic has affected all 67 counties within the Commonwealth of Pennsylvania, including Allegheny County where The Cracked Egg, LLC operates

its restaurant business. Id. The number of cases and deaths have continued to grow locally, nationally, and globally, and the numbers are even greater as of the writing of this Memorandum Opinion. Indeed, the most recent data on the CDC website with respect to the United States reflects 20,732,404 cases and 352,464 deaths nationwide.¹ The Pennsylvania Department of Health reports on its website 673,915 total cases statewide and 16,546 deaths.² The most recent data regarding Covid-19 cases in Allegheny County, Pennsylvania reflects 56,827 cases and 1,011 deaths.³

Faced with the unprecedented pandemic, Pennsylvania Governor Tom Wolf determined on March 6, 2020 that Covid-19 constituted a threat of imminent disaster to the health and citizens of the Commonwealth of Pennsylvania, and he also issued a statewide disaster declaration. Allegheny County Council ratified the emergency declaration thereby declaring a county-wide emergency on March 12, 2020.

In July of 2020, Pennsylvania's Secretary of Health, Rachel Levine, M.D., issued certain orders requiring the use of face coverings at indoor locations where

¹ See CDC COVID Data Tracker, Centers for Disease Control and Prevention, http://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited Jan. 6, 2021).

² See COVID-19 Data for Pennsylvania: COVID-19 Dashboard, Pennsylvania Department of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> (last visited Jan. 6, 2021).

³ See COVID-19, Allegheny County, <https://www.alleghenycounty.us/Health-Department/Resources/COVID-19/COVID-19.aspx> (last visited Jan. 6, 2021).

Similarly, it has been averred that the County Health Department is statutorily directed to, among other things, execute “the rules and regulations of the State Department of Health and other departments, boards, or commissions of the State government.” Motion at ¶ 5 (citing 16 P.S. § 12010(a)). The County Health Department additionally has the primary responsibility for the prevention and control of communicable and non-communicable diseases in Allegheny County. Motion at para 6 (citing 35 P.S. § 521.3(a)).

Sub judice, it is uncontested that beginning sometime prior to the commencement of the instant bankruptcy case and continuing through the date of this Memorandum Opinion, the Debtor has violated (and continues to violate) the Covid-19 Control Measure Orders. For example, public facing employees of the Debtor have been observed not wearing face masks and patrons have been observed being admitted into the Debtor’s restaurant and bar area not wearing masks. See Motion at ¶¶ 19 and 20 and Debtor’s Response, ECF No. 51, at ¶¶ 19 and 20. It has also been alleged that the Debtor is not honoring physical distancing and other requirements set forth in the Covid-19 Control Measure Orders.

Given the alleged violations, the County Health Department suspended the Debtor’s operating permit in August of 2020 and ordered the Debtor’s facility to close, which the Debtor has continued to ignore. Given the Debtor’s failure to adhere to the County Health Department’s directives, the County Health

Department commenced a civil enforcement action against the Debtor in the Court of Common Pleas of Allegheny County, Pennsylvania at No. GD-20-9809.⁵ This action was filed on September 4, 2020, and was pending when the Debtor filed the instant bankruptcy case on October 9, 2020.

Given the pending bankruptcy, the County Health Department requests that the automatic stay be lifted so that it may prosecute its enforcement action against the Debtor. Upon review of the language of the pertinent statute, and the circumstances of this case, this Court concludes that the County Health Department's motion has merit and should be granted.

The mere fact that a debtor has filed for bankruptcy protection does not obviate the requirement that a debtor abide by applicable law. Congress has recognized as much when it passed 28 U.S.C. § 959(b), which states that:

. . . a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

The Court also observes that the automatic stay in bankruptcy is a shield and not a sword designed to afford a party with a litigation advantage. While the automatic stay in bankruptcy is designed to afford the honest but unfortunate

⁵ The civil enforcement action was removed to this Court, and the County Health Department has filed a motion asking that the matter be remanded. Since the action properly belongs before the Court of Common Pleas of Allegheny County, an order shall be entered remanding the matter to the state court for adjudication.

debtor with respite from creditor collection activities, the extent or reach of the automatic stay is not absolute. When Congress enacted the Bankruptcy Code it was well aware that:

the stay provision [of 11 U.S.C. § 362(a)] was particularly vulnerable to abuse by debtors improperly seeking refuge under the stay in an effort to frustrate necessary governmental functions. To combat the risk that the bankruptcy court would become a sanctuary for [wrongdoers] Congress enacted the police and regulatory power exception to the automatic stay.

U.S. v. Nicolet, 857 F.2d 202, 207 (3d Cir. 1988)(citing Commodity Futures Trading Comm'n v. Co Petro Mktg. Group, Inc., 700 F.2d 1279, 1283 (9th Cir. 1983).

Accordingly, Congress wrote limitation provisions into the Bankruptcy Code. These limiting provisions reflect Congress's intention that the automatic stay does not provide a debtor in bankruptcy with a *carte blanche* excuse to avoid health and safety regulations. Section 362(b)(4) of the Bankruptcy Code provides as much, and this statute expressly provides that the automatic stay does not apply to:

the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

See 11 U.S.C. § 362(b)(4). As the Third Circuit Court of Appeals wrote:

This exception discourages debtors from submitting bankruptcy petitions either primarily or solely for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare . . .

In re Nortel Networks, Inc., 669 F.3d 128, 137 (3rd Cir. 2011)(quoting In re McMullen v. Sevigny (In re McMullen), 386 F.3d 320, 324-25 (1st Cir. 2004)).

Application of this law to the facts of this case reveals not much of a dispute about bankruptcy law. The Court reaches this conclusion because the Debtor has not contested that (a) Allegheny County is a governmental unit having standing under section 362(b)(4), (b) to the extent that the Covid-19 Control Measure Orders are valid, enforcement of them is a proper exercise of police and regulatory power by the County Health Department, and (c) the purpose of the County Health Department's enforcement action is to protect public health and safety of the citizens of Allegheny County as opposed to being an action primarily seeking to protect a governmental pecuniary interest such as collecting a debt. See Nortel Networks, 669 F.3d at 137-42.

Rather, the Debtor's challenge to the Motion for Relief From Automatic Stay, is an overt challenge the legality or constitutionality of the Covid-19 Control Measure Orders. In essence, the Debtor's defense to the motion is to essentially request that this Court declare the Covid-19 Control Measure Orders un-

constitutional and therefore deny the Motion for Relief From Automatic Stay because it is *ultra vires*. The Court, however, declines to accept the Debtor's invitation to insert itself into the fray regarding the ultimate merits of the Covid-19 Control Measure Orders. The Court renders this decision for a couple of reasons.

First, nothing in section 362(b)(4)'s police or regulatory power exception to the automatic stay conditions its application upon this Court making a gatekeeper determination as to whether an exercise of police or regulatory power is proper in the first instance. The plain language of 11 U.S.C. § 362(b)(4) even suggests otherwise when it excepts from the automatic stay any "commencement" or "continuation" of legal action by the governmental entity. The use of the words "commencement" and "continuation" demonstrates that the exception includes litigation that is far from final adjudication. It also reflects the fact that parties are left to their relative non-bankruptcy law claims and defenses (each of which are to be decided in the appropriate court of competent jurisdiction).

Second, this Court's viewpoint is consistent with United States Supreme Court precedent. Almost three decades ago the Supreme Court rejected the argument that courts applying 11 U.S.C. § 364(b)(4) must first decide whether the proposed exercise of police or regulatory power is "legitimate," finding that such a "broad reading... would require bankruptcy courts to scrutinize the validity of every administrative or enforcement action brought against a bankrupt entity." Bd. of Governors of Fed. Reserve Sys. v. MCorp Fin., Inc., 502 U.S. 32, 40, 112

S.Ct. 459, 116 L.Ed.2d 358 (1991). The Court held that "[s]uch a reading is problematic, both because it conflicts with the broad discretion Congress has expressly granted many administrative entities and because it is inconsistent with the limited authority Congress has vested in bankruptcy courts." Id.

Third, section 362(b)(4)'s terms are plain and unambiguous and this Court is powerless to re-write them to add the gatekeeper function that the Debtor is requesting. The United States Supreme Court instructed that:

In interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.

Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992)(internal citations and quotation marks omitted).

Fourth, to the extent this Court has a general equitable power under 11 U.S.C. § 105(a) to entertain the Debtor's request, the outer boundaries of this Court's equitable power is the Bankruptcy Code itself. Here the United States Supreme Court has also instructed that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988).

Fifth, even if this Court possesses the equitable powers the Debtor suggests,

substantial question or uncertainty remains with respect to the Debtor's constitutional challenge to the Covid-19 Control Measure Orders. It is true that in County of Butler v. Wolf, Civil Action No. 2:20-cv-677, 2020 WL 5510690 (W.D. Pa. Sept. 14, 2020) the United States District Court held that certain Covid-19 lockdown restrictions in Pennsylvania violated federal constitutional principles. The decision, however, did not address all of the elements of the Covid-19 Control Measure Orders, such as the requirement of face coverings. The decision in Butler v. Wolf also is presently on appeal, and the Third Circuit Court of Appeals has stayed the trial court's judgment. County of Butler v. Governor of Pennsylvania, No. 20-2936, 2020 WL 5868393 (3rd Cir. October 1, 2020).

Subsequent to Butler v. Wolf, other federal courts in cases involving restaurants and bars have called the decision of the District Court into question. These cases include AJE Enter. LLC v. Justice, Civil Action No. 1:20-CV-229, 2020 WL 6940381 (N.D. W.Va. Oct. 27, 2020) and M. Rae, Inc. v. Wolf, *supra*. These courts hold that the constitutional challenges posed by the plaintiff's in those cases do not have a likelihood of success. In reaching such a conclusion, these courts appear to conclude that state mitigation efforts to curtail the spread of Covid-19 are subject to "rational basis review." Utilizing that legal framework, the courts presume that state Covid-19 mitigation efforts are constitutional, making it incumbent upon the plaintiffs to negate "every conceivable basis which might support it." AJE Enter. LLC v. Justice, 2020 WL 6940381, at *2 (quoting

Armour v. City of Indianapolis, 566 U.S. 673, 681 (2012)).

Not to be lost in the myriad of case-law emerging during the Covid-19 pandemic are the words of Chief Justice John Roberts, who wrote the following in his concurring opinion in South Bay United Pentecostal Church v. Newsom, 140 S.Ct. 1613 (2020):

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” Jacobson v. Massachusetts, 197 U.S. 11, 38, 25 S.Ct. 358, 49 L.Ed. 643 (1905). When those officials “undertake[] to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” Marshall v. United States, 414 U.S. 417, 427, 94 S.Ct. 700, 38 L.Ed.2d 618 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people. See Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 545, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985).

See South Bay, 140 S.Ct. at 1613-14.


In reciting the case-law set forth above, this Court is not undertaking an exhaustive analysis of the constitutional issues presented by the Debtor’s challenge to the Covid-19 Control Measure Orders. The Court is merely pointing out the fact that the Debtor’s case is hardly the proverbial “slam-dunk.” Indeed, in rendering this decision, the Court is sympathetic to the fact that the Debtor’s

business (like lots of businesses throughout the United States) has suffered because of the pandemic. The Court also recognizes that the police power of the Commonwealth is not absolute. As one court wrote: “While the law may take periodic naps during a pandemic, we will not let it sleep through one.” Maryville Baptist Church, Inc. v. Beshear, 957 F.3d 610, 615 (6th Cir. 2020).

In essence, given the fact that the Debtor’s objection to the Covid-19 Control Measure Orders does not lend itself to an obvious ruling in the Debtor’s favor, the Court’s discretion is that it is better to leave the determination of these issues to the court of competent jurisdiction that will ultimately preside over this dispute. This conclusion does not prejudice the Debtor, because the Debtor is free to defend itself and raise its constitutional defenses in those proceedings. In addition, the Debtor currently is a plaintiff in a civil rights case against the County in the United States District Court for the Western District of Pennsylvania filed at No. 2:20-cv-01434-RJC. Nothing prevents the Debtor from asking the United States District Court Judge in that case for leave of court to amend the complaint to pursue injunctive relief to the extent the Debtor believes it can state and prove a claim for the same.

For the reasons set forth above, an order shall be entered that grants the Motion for Relief From Automatic Stay filed by the County Health Department.

Date: January 7, 2021



pgc
The Honorable Jeffery A. Deller
United States Bankruptcy Judge

cc: James R. Cooney, Esq., counsel to the Debtor
Viyalakshmi Patel, Esq., counsel to the County of Allegheny

FILED
1/7/21 9:57 am
CLERK
U.S. BANKRUPTCY
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:	)	Bankruptcy No. 20-22889-JAD
)	
THE CRACKED EGG, LLC,	)	Chapter 11
)	
Debtor,	)	Related to Document Nos. 62 and 69
_____)	
)	
COUNTY OF ALLEGHENY, a political)	
subdivision of the Commonwealth of)	
Pennsylvania,)	
)	
Respondent,)	
)	
v.)	
)	
THE CRACKED EGG, LLC,)	
)	
Movant.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the RESPONSE TO EXPEDITED MOTION FOR STAY PENDING APPEAL was served on this 18th day of January 2021, via electronic mail PDF to the following addresses:

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Date: January 18, 2021

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:)	Bankruptcy No. 20-22889-JAD
)	
THE CRACKED EGG, LLC,)	Chapter 11
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Debtor,)	
<hr/>)	
COUNTY OF ALLEGHENY, a political)	
subdivision of the Commonwealth of)	
Pennsylvania,)	
)	
Respondent,)	
)	
v.)	
)	
THE CRACKED EGG, LLC,)	
)	
Movant.)	

ORDER OF THE COURT

AND NOW, this _____ day of _____, 2021, upon consideration of Respondent’s Response To Expedited Motion For Stay Pending Appeal, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court makes the following findings:
 - a. Movant has not made a strong showing of the likelihood of success on the merits;
 - b. Movant will not suffer irreparable injury absent a stay.
 - c. A stay would substantially harm the Respondent, and
 - d. A stay is not in the public interest.

2. Movant’s Expedited Motion for Stay Pending Appeal is denied and Respondent may proceed with its action against Debtor at Docket Number GD-20-9809 in the Allegheny County

Court of Common Pleas.

3. This ORDER shall become effective IMMEDIATELY.

BY THE COURT: _____, J