

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO 1777 6th Street Boulder, CO 80302 (303) 441-1866	DATE FILED: August 27, 2020 4:07 PM FILING ID: 460DC7D6615D8 CASE NUMBER: 2020CV30712
<p>Plaintiff:</p> <p>BOULDER COUNTY PUBLIC HEALTH,</p> <p>v.</p> <p>Defendant:</p> <p>MAGIC FAIRY CANDLES, LLC.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff:</p> <p>David Hughes, #24425 Deputy County Attorney Catherine R. Ruhland, #42426 Deputy County Attorney BOULDER COUNTY ATTORNEY P.O. Box 471, Boulder, CO 80306 Phone: (303) 441-3855 Fax: (303) 441- 4794 Email: dhughes@bouldercounty.org truhland@bouldercounty.org</p>	<p>Case Number:</p> <p>Division:</p>
<p align="center"><u>EMERGENCY COMPLAINT FOR INJUNCTIVE RELIEF INCLUDING TEMPORARY RESTRAINING ORDER AND MOTION FOR TELEPHONIC HEARING</u></p>	

Plaintiff Boulder County Public Health, by and through its attorneys, the Boulder County Attorney’s Office, states and alleges as follows:

Part One: Parties, Jurisdiction and Venue

1. Plaintiff Boulder County Public Health (“Public Health” or “BCPH”) is a political subdivision of the State of Colorado established as a county public health agency pursuant to C.R.S. § 25-1-506.

2. Defendant Magic Fairy Candles, LLC (“Defendant”), is a Colorado limited liability corporation operating a store and doing business at 634 Main Street, Longmont, Colorado (the “Property”) within Boulder County, Colorado.

3. Accordingly, Public Health has jurisdiction over Defendant pursuant to C.R.S. § 25-1-506(2)(a)(I).

4. The Court has jurisdiction over this action pursuant to C.R.S. § 25-1-514, which requires the county attorney to bring any civil action requested by a county public health director to restrain or enjoin any action that is in violation of the public health laws and the standards, orders, and rules of the state board of health or a county board of health.

5. Venue is proper in Boulder County because Defendant is currently located in Boulder County. *See* C.R.C.P. 98(c)(1).

Part Two: General Allegations

6. Public Health has a statutory duty “[t]o investigate and control the causes of epidemic or communicable diseases and conditions affecting public health[.]” C.R.S. § 25-1-506(3)(b)(V).

7. Public Health has a statutory duty “[t]o the extent authorized by the provisions of this title or article 20 of title 30, C.R.S., to administer and enforce the laws pertaining to: [...] (C) The orders, rules, and standards of the state board and any other type 1 agency created pursuant to the provisions of this title[.]” C.R.S. § 25-1-506(3)(b)(IV).

8. Public Health is further authorized and has a statutory duty to “close schools and public places and to prohibit gatherings of people when necessary to protect public health[.]” C.R.S. § 25-1-506(3)(b)(VII).

9. Public Health has a statutory duty and additional authority to “investigate and abate nuisances when necessary in order to eliminate sources of epidemic or communicable diseases and conditions affecting public health[.]” C.R.S. § 25-1-506(3)(b)(VIII).

10. In the event of a violation of a public health law, standard, order, or rule of any state board or county or district board of health, a county attorney “shall bring” such action “to abate a condition that exists in violation of, or to restrain or enjoin any action that is in violation of” such orders. C.R.S. § 25-1-514.

11. The construction of a statute by administrative officials charged with its enforcement shall be given great deference by the courts. *Travelers Indem. Co. v. Barnes*, 552 P.2d 300, 303 (Colo. 1976); *Bd. of Cty. Comm’rs v. ExxonMobil Oil Corp.*, 192 P.3d 582, 586 (Colo. App. 2008).

12. C.R.S. § 25-1-509(1)(c) provides that, in the event of a public health emergency, Public Health shall issue orders and adopt rules consistent with the laws and rules of the state as the Public Health Director may deem necessary for the proper exercise of the powers and duties vested in or imposed upon Public Health.

13. On March 10, 2020, Governor Polis declared a state of emergency in response to COVID-19, the illness caused by the SARS-CoV-2 virus (the novel coronavirus).

14. Pursuant to Executive Order D 2020 138, the Executive Director of the Colorado Department of Public Health & Environment (CDPHE) issued Public Health Order 20-28, which requires face coverings for all employees in a public indoor space.

15. Executive Order D 2020 138 Section II.G requires all individuals over ten years old to wear a face covering over the individual's nose and mouth when entering or moving within any public indoor space. Section II.I prohibits the provision of service to any individual not wearing a facial covering as required under Section II.G. Section II.J requires the posting of signs at the entrance to any public indoor space instructing individuals of their legal obligation to wear a face covering when entering or moving within a public indoor space.

16. The Property is an enclosed indoor area that is privately owned, managed, and operated to which individuals have access by right or by invitation and is accessible to the public. Accordingly, the Property is a Public Indoor Space as defined by Executive Order D 2020 138.

17. BCPH 2020-05 requires each person over the age of ten in Boulder County to wear a face covering in any Public Indoor Space, as required by D 2020 138.

18. On July 30, 2020 BCPH staff received a complaint that three employees at Defendant's Property were not wearing face coverings, that employees were not observing social distancing, and that the Property did not have signage required by BCPH 2020-05 and Executive Order D 2020 138 informing customers of legal face covering requirements.

19. On July 30, 2020, BCPH employee Ambra Sutherlin spoke to Kimberly Sorden, registered agent for Defendant. Ms. Sorden told Ms. Sutherlin that signage is posted and that employees were wearing masks and social distancing.

20. On August 6 and 8, 2020, BCPH received two complaints from the public indicating that the Business employees were not wearing face covering and were getting close to customers' faces. In addition, BCPH was told that the Business posted a sign on its front door, a photo of which is attached as Exhibit 1, which states "Wearing a mask does not align with our spiritual beliefs. If you are opposed to this please order online at magicfairycandles.com."

21. On August 11, 2020, BCPH issued a Notice of Violation of Executive Order D 2020 138 and Public Health Order 20-28/Cease and Desist Order ("the August 11 Order") to

Kim Sorden of Magic Fairy Candles, which is attached as Exhibit 2 and incorporated into this Complaint. The August 11 Order informed Defendant about the applicable State and County face covering orders and specified: **“YOU ARE ORDERED TO IMMEDIATELY CEASE AND DESIST FROM VIOLATING CURRENT PUBLIC HEALTH AND EXECUTIVE ORDERS.”**

22. On August 20, 2020, Ms. Sutherlin inspected the Property and observed that Exhibit 1 remained posted on the Property.

23. Defendant is allowing its employees and customers to enter the Property and transact business without wearing face covering. Defendant has failed to post signage at the Property required under Executive Order D 2020 138 and BCPH 2020-05.

Claim for Relief: Injunctive Relief

24. Public Health incorporates the allegations contained above in paragraphs 1 through 23.

25. The August 11 Order states: “Your failure to immediately comply with this Notice of Violation, Executive Order D 2020-138, and Public Health Order 20-28 could result in BCPH taking legal action to stop a violation.”

26. BCPH Order 2020-25 states: **“FAILURE TO COMPLY WITH THIS ORDER IS SUBJECT TO PENALTIES CONTAINED IN C.R.S. §§25-1-114 and 25-1-516 . . .”**

27. Pursuant to C.R.S. § 25-1-516(1)(a), it is unlawful for any person, association, or corporation and the officers thereof, to willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, or role.

28. C.R.S. § 25-1-516(3) provides that any person, association, or corporation, or the officers thereof, who violates any provision of this section is guilty of a class 1 misdemeanor and, upon conviction thereof, shall be punished pursuant to the provisions of C.R.S. § 18-1.3-501.

29. C.R.S. § 25-1-516(3) further provides that, in addition to the fine or imprisonment imposed pursuant to C.R.S. § 18-1.3-501, the person, association, or corporation, or the officers thereof, shall be liable for any expense incurred by Public Health in removing any nuisance, source of filth, or cause of sickness.

30. Pursuant to C.R.S. § 25-1-514, upon the request of the Public Health Director, the County Attorney for Boulder County shall bring a civil action to abate a condition that exists in violation of, or to restrain or enjoin any action that is in violation of, or to prosecute for the violation of or for the enforcement of, the public health laws and the standards, orders, and rules of Public Health.

31. Colorado Rule of Civil Procedure 65(b) authorizes the Court to grant a temporary restraining order “without written or oral notice to the adverse party or his attorney if: (1) It clearly appears from specific facts shown by affidavit or by the verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing or on the record the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.”

32. Public Health has a statutory duty to establish, maintain, and enforce isolation and quarantine as Public Health finds necessary for the protection of the public health. C.R.S. § 35-1-506(3)(b)(VI).

33. C.R.S. § 25-1-514 establishes a cause of action for Public Health to bring in order to restrain or enjoin any action that is in violation of a public health law or order.

34. Defendant willfully violated BCPH Order 2020-05, CDPHE Order 20-28, Order D 2020 138, and the August 11 Order.

35. For the reasons set forth in the attached Exhibit 3 supporting Affidavit, Public Health submits that irreparable injury, loss, or damage will result to Public Health before Defendant or its attorney can be heard in opposition.

36. Public Health is further entitled to an award of its expenses, including reasonable attorney's fees, incurred in obtaining injunctive relief.

Demand and Prayer for Relief

Public Health respectfully requests that this Honorable Court enter the following orders for Plaintiff and against Defendant Magic Fairy Candles, LLC on its Claim for Relief and Temporary Restraining Order:

A. Judgment in favor of Public Health and against Defendant Magic Fairy Candles, LLC on the claim asserted.

B. Grant a temporary restraining order and after appropriate hearing enter a permanent order enjoining and restraining Defendant Magic Fairy Candles, LLC from violating public health laws and lawful orders and requiring Defendant Magic Fairy Candles, LLC to immediately commence compliance with all terms and requirements contained in the August 11 Order, without notice to Defendant Magic Fairy Candles, LLC or an opportunity for Defendant to be heard in opposition. Specifically, Public Health requests that the Court order the following:

C. Authorize BCPH staff to inspect the Property during business hours to determine if Defendant is complying with the Court's Order and seek further relief from this Court,

including temporary closure of the Property, should it appear that Defendant is not complying with this Court's order.

D. An award of reasonable costs and attorney's fees.

E. Such other and further orders and relief as the Court deems just.

Dated this 27th day of August 2020.

Respectfully submitted,

BOULDER COUNTY ATTORNEY

/s/ David Hughes

David Hughes
Deputy County Attorney
Catherine R. Ruhland
Deputy County Attorney

Attorneys for Plaintiff