



2. Defendant HNR Desautels LLC is a for-profit business that operates a mailing and printing center at 137 Main Street, Newport, Vermont.
3. Defendant Andre M. Desautels is a real person and the owner and principal of Defendant HNR Desautels LLC. Upon information and belief, Mr. Desautels resides in North Troy, Vermont.
4. As of the filing of this Complaint, Defendants are conducting in-person business activities without following the mandatory health and safety requirements established by Governor Scott's COVID-19-related executive order and addenda and guidance issued thereunder for all business, non-profit, and governmental operations, specifically the requirement that employees wear masks while in the presence of others.

***Statutory Structure***

5. By statute, Vermont's Governor is authorized: "To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this [emergency management] chapter with due consideration of the plans of the federal government." 20 V.S.A. § 8(b)(1).
6. The Governor is further authorized to "prepare a comprehensive plan and program for the emergency management of this state, such plan and program to be integrated into and coordinated with the emergency management plans of the federal government, the Canadian government, and other states to the fullest possible extent[.]" 20 V.S.A. § 8(b)(2)(A).

7. The Governor may “take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules, and regulations made pursuant thereto.” 20 V.S.A. § 8(b)(6).
8. The Governor “may proclaim a state of emergency within the entire State or any portion or portions of the State” in response to an “all-hazards” event. 20 V.S.A. § 9.
9. An “all-hazards” event includes a “health or disease-related emergency . . . which poses a threat or may pose a threat . . . to property or public safety in Vermont.” 20 V.S.A. § 2(1).
10. Once the Governor has declared a state of emergency, he may “enforce all laws, rules, and regulations relating to emergency management[.]” 20 V.S.A. § 9(1).
11. He may also “order the evacuation of persons living or working within all or a portion of an area for which a state of emergency has been proclaimed” and may “perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population.” 20 V.S.A. § 9(9), 11(6).

### ***COVID-19***

12. Since December 2019, the State has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC) and with the

United States Health and Human Services Agency to monitor and plan for a potential outbreak of respiratory illness due to a novel coronavirus known as SARS-CoV-2, which causes a disease known as COVID-19.

13. People with COVID-19 can experience a wide range of symptoms, ranging from mild illness to severe or critical illness. Some people become infected but do not develop any symptoms and do not feel unwell. SARS-CoV-2 is able to be transmitted during the pre-symptomatic incubation period, and by people who are infected but are asymptomatic.
14. The incubation period for the virus—the period during which a person who has been exposed to the virus does not yet show symptoms of infection—is thought to be between 2 and 14 days.
15. The virus that causes COVID-19 spreads mainly from person to person, mainly through respiratory droplets produced when an infected person coughs, sneezes, or even breathes.
16. Respiratory droplets can also land on surfaces and objects. It is possible that a person could get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes. Spread from touching surfaces is not thought to be a common way that COVID-19 spreads.
17. Viral transmission is more likely when people are in close proximity or contact with one another.
18. There is evidence that the virus spreads more easily indoors than outdoors.

19. Behavioral modifications can reduce transmission of the virus. Without any behavioral modifications, the virus spreads very easily and sustainably between people.
20. Behavioral modifications that slow the spread of the virus include wearing masks, frequent hand washing, frequent washing of surfaces touched by many people, and distancing from other people by at least six feet.
21. Because respiratory droplets are now understood to be the primary method of transmission, the use of facial coverings is very important in minimizing the transmission of the virus in places where people from multiple households may interact.
22. COVID-19 is a new disease and there is limited information regarding risk factors for severe disease. Older people, and those with underlying medical problems like high blood pressure, heart problems, or diabetes are more likely to develop serious illness, but anyone infected with COVID-19 is at some risk of developing serious illness and dying.
23. People who become seriously ill with COVID-19 may require hospitalization, including admission to an Intensive Care Unit (ICU). These patients sometimes require a ventilator to help them breathe as the illness severely debilitates their lungs. Medical staff caring for these patients require personal protective equipment such as gowns, medical grade facemasks, and eye shields to lower the chances they will catch the virus themselves.
24. COVID-19 has an overall fatality rate of approximately 1.8% in the U.S.

25. There is no known cure for COVID-19 and even with the development of various therapeutic medicines, COVID-19 remains a significant health risk to those who become ill with it.

26. While there are multiple effective vaccines for COVID-19, they are thus far not widely available and until there is widespread vaccination, COVID-19 poses a substantial risk to the health and welfare of the residents of Vermont.

***The Governor's Amended and Restated Executive Order 01-20 and Addenda***

27. Due to the rapidly growing global concern over COVID-19, the Governor directed the Vermont Department of Health (VDH) to activate the State's Health Operations Center in February 2020 when VDH began to monitor and later test Vermonters who may have been exposed to COVID-19.

28. In March 2020, the Governor directed Vermont Emergency Management (VEM) to assemble an interagency taskforce, and later to activate the Vermont State Emergency Operations Center (SEOC), in accordance with the Vermont State Emergency Management Plan, to organize prevention, response, and mitigation efforts and share information with local and State officials.

29. On March 13, 2020, the Governor issued Executive Order 01-20 (EO 01-20) and declared a state of emergency in Vermont, effective from March 13 – April 15, due to the pandemic outbreak of COVID-19 and potential for its

spread in Vermont. The state of emergency was later extended past April 15 and remains in place as of the date of this filing.

30. In the weeks between March 13 and June 15, the Governor issued various addenda amending EO 01-20 and additional directives clarifying and recalibrating its requirements based on changing case numbers and other conditions.

31. The addenda effectuated a phased reopening of Vermont's economy by allowing businesses in various sectors to have limited in-person operations under health- and safety-based guidance and restrictions.

32. The opening of in-person business operations was and still is predicated on all business, non-profit, and governmental operations following the State's requirements to ensure that in-person activities are done in a safe manner.

33. During this phased reopening, EO 01-20 and its addenda authorized, referred to, and required compliance with guidance established by the Secretary of the Agency of Commerce and Community Development (ACCD).

34. From its inception, the guidance from ACCD included "Mandatory Health & Safety Requirements For all Business, Non-profit & Government Operations." One of these requirements was that "Employees must wear face coverings over their nose and mouth when in the presence of others. In the case of retail cashiers, a translucent shield or 'sneeze guard' is acceptable in lieu of a mask. Businesses and non-profit and government entities may require customers or clients to wear masks."

35. On June 15, 2020, the Governor issued Amended and Restated Executive Order No. 01-20 (Restated EO 01-20) which superseded the original EO 01-20 as amended and all addenda thereto.
36. Restated EO 01-20 allowed for the resumption of nearly all business, non-profit, and government entity operations subject to “occupancy limits and physical distancing, health and sanitation and training requirements set forth in ACCD Work Safe Guidance.”<sup>2</sup>
37. The Secretary of ACCD issued updated Work Safe Guidance that included the same mandatory requirement for all business, non-profit, and governmental entities that employees that must wear face coverings over their nose and mouth when in the presence of others.
38. On July 24, 2020, the Governor issued Addendum 2 to Restated EO 01-20<sup>3</sup> which strengthened the use of facial coverings by requiring members of the general public to wear masks whenever in public and in close contact to others. It went on to state “[f]or the sake of clarity, the requirements for masks or facial coverings or permitted alternatives in specific circumstances shall continue to apply as set forth in . . . [the] Phased Restart Work Safe Guidance issued by the Secretary of [ACCD].”

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<sup>2</sup><https://governor.vermont.gov/sites/scott/files/documents/Amended%20and%20Restated%20Executive%20Order%20No.%2001-20.pdf>

<sup>3</sup><https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%202%20TO%20AMENDED%20AND%20RESTATED%20EXECUTIVE%20ORDER%20NO.%2001-20.pdf>

39. ACCD has also issued responses to frequently asked questions, including the question “Do I need to require my employees to wear masks?” The answer provided by ACCD is “Yes” and it further states that “where an employee is physically unable to wear a mask, the employer should require a note from a doctor explaining their need for an accommodation, and the employer should implement other measures to protect the workplace and the employee.”<sup>4</sup>

### ***COVID-19 in Vermont***

40. On March 7 and 11 of 2020, VDH detected the first two cases of COVID-19 in Vermont.

41. On March 11, 2020, the WHO characterized COVID-19 as a pandemic.

42. Both contact and travel-related cases and community-contact transmissions (“community spread”) of COVID-19 have been detected in Vermont and its surrounding region and this transmission is expected to continue.

43. “Community spread” means some people who have been infected with the virus are not sure how or where they became infected.

44. As of the morning of February 23, 2021, VDH reports:

- a. 14,608 total cases of COVID-19 in Vermont;
- b. 198 deaths attributed to COVID-19 in Vermont; and
- c. 37 currently hospitalized due to COVID-19, with 13 in the ICU.<sup>5</sup>

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<sup>4</sup> <https://accd.vermont.gov/covid-19/business/faqs>

<sup>5</sup> Current numbers are available here: <https://www.healthvermont.gov/covid-19/current-activity/vermont-dashboard>.

45. COVID-19 cases have been documented in every county in Vermont. Orleans County has had 409 reported cases as of February 23, 2021.
46. Every person in the State is potentially at risk of infection. As of the morning of February 23, 2021, only 16.4% of Vermont’s population has received at least one dose of vaccine for COVID-19—meaning 83.6% of the population has not.<sup>6</sup> The two current vaccines were 95% and 94.1% effective among clinical trial participants, which means that about 1 in 20 people who are fully vaccinated might not be protected against COVID-19. Additionally, the duration of natural immunity to COVID-19 from prior infection is not well understood. Further, it is not known at this time whether people who are vaccinated or have been infected with COVID-19 and naturally developed antibodies can still carry and transmit the virus to others. It is therefore important for all Vermonters to continue to wear masks and take other steps to limit transmission of the virus.
47. If COVID-19 spreads unchecked, it could overwhelm the capacity of the State’s health care system to care for those with serious illness. The State could experience shortages in needed inpatient hospital beds, intensive care unit beds, ventilators, and personal protective equipment for hospital staff.
48. One of the only tools available to fight this public health crisis is to try to slow the spread of the virus. Slowing the spread of the virus has been effective at reducing the number of patients needing emergent medical care

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<sup>6</sup> Current numbers are available here: <https://www.healthvermont.gov/covid-19/vaccine/covid-19-vaccine-dashboard>

at the same time. This is the best way to try to ensure that everyone who needs life-saving medical resources in Vermont will have access to them when they are most needed.

49. Some of the factors that influence the rate of infection in Vermont include under what limits and guidelines Vermont businesses are allowed to operate in-person services, and whether and to what extent individuals comply with mandatory behavioral changes described above and set forth in mandatory health and safety guidance promulgated by VDH and ACCD.
50. COVID-19 infection rates vary dramatically based on the above factors, but non-compliance with the mandatory health and safety guidance has been linked to outbreaks of the virus and increases in community spread.
51. Any increase in occurrences of non-compliance with the mandatory health and safety guidance is likely to increase total case counts which in turn is likely to increase hospitalizations and adverse medical outcomes for Vermonters.
52. If individuals and businesses do not follow the prescribed mandatory health and safety requirements, it risks the health and safety of workers in critical industries and of those living and working in high-risk facilities such as long-term care facilities.
53. One of the State's goals throughout the pandemic has been, and continues to be, to keep the number of people needing hospitalization and acute care as a result of COVID-19 infections within the State's resources to care for them.

54. If individuals and businesses do not follow the mandatory health and safety requirements, the State risks greater outbreaks and increased community spread of COVID-19 which could overburden the State's healthcare resources.

55. Additionally, if individuals and businesses do not follow the State's mandatory health and safety requirements, it will also particularly jeopardize the health and safety of workers in critical industries, such as healthcare and grocery stores, and of those living and working in high-risk facilities such as long-term care facilities.

### ***Enforcement***

56. The Attorney General "may bring an action for injunctive relief in the superior court of the county in which a violation occurs to compel compliance with the provisions of [the Emergency Management] chapter." 20 V.S.A. § 40(c).

57. A person who "violates any provision of [the Emergency Management] chapter or any rule adopted under [the Emergency Management] chapter shall be fined not more than \$1,000.00 for each violation. Each day a violation continues shall be deemed to be a separate violation." 20 V.S.A. § 40(b).

### ***Facts Relating to Defendants***

58. Upon information and belief, Defendants own and operate a business at 137 Main Street in Newport, Vermont that provides services including mailboxes, graphics, and copying.

59. In response to reports that Defendants' employees were not wearing masks as required by the Governor's Restated EO 01-20 and associated guidance, the Newport Police Department conducted a compliance check at Defendants' store on November 9, 2020 and observed that Defendant Desautels was not wearing a mask as required.
60. This apparent non-compliance was referred to the Attorney General's Office, which sent Defendant Desautels a letter informing them of the mask requirement for employees and advising them to comply.
61. On February 1, 2021, the Newport Police Department received another report that Defendants were violating the mask requirement for employees.
62. Later on February 1, Officer Tanner Jacobs spoke with Defendant Desautels at Defendants' store. Officer Jacobs observed one employee wearing a mask and Defendant Desautels not wearing a mask.
63. On February 11, 2021, in response to reports of noncompliance, the Attorney General's Office asked the Newport Police Department to speak to Defendants about the Governor's mask requirement for employees.
64. Officer Carmen Visan prepared paperwork about the Governor's mask requirement for employees and another officer, Officer Jacobs, hand-delivered it to Defendant Desautels. Defendant said that he was not going to change his beliefs on the matter.

65. On February 16, 2021, the Newport Police Department received another report via the Attorney General's Office that Defendants were violating the mask requirement.
66. Officer Nicholas Keithan conducted a compliance check on February 16. When he arrived, he found a printed sign on the door.
67. The sign on Defendants' door said: "Please feel free to wear your mask into the store. We choose not [to] wear a mask and if you're uncomfortable with this, we ask that you do not come in to ensure your comfort. If you decide to come in do not ask us to put a mask on. Thank you for your understanding."
68. When he entered the building, Officer Keithan spoke with a female employee who was not wearing a mask and was not otherwise behind a translucent shield. He asked to speak to Defendant Desautels. Defendant Desautels met with him and was not wearing a mask. Officer Keithan tried to inform him of the Governor's orders and provide literature about the order. Defendant Desautels refused to accept the materials or listen to Officer Keithan and indicated that he was not going to comply with the mask requirement and had no intention to do so in the future.
69. The Attorney General's Office sent Defendant Desautels a cease-and-desist letter on February 17, 2021.
70. On February 18, 2021, the Newport Police Department received another complaint of noncompliance with the mask requirement. Officer Royce Lancaster went to the store and spoke with Defendant Desautels. Defendant

and an employee were not wearing masks. Defendant Desautels said he was aware of the mask compliance violation and said he had heard from the Vermont Attorney General's Office and was pushing back as it was something he believed in.

71. On February 19, 2021, on request by the Vermont Attorney General's Office, Officer Joshua Lillis conducted a compliance check at Defendant's business and observed one employee not wearing a mask. Officer Lillis advised her that she was not in compliance with the mask requirement. She replied "yep."

72. On February 22, 2021, Officer Lancaster of the Newport Police Department went to Defendants' business to do a compliance check. Defendant Desautels told Officer Lancaster that his attorney has told him to not let Newport Police in the store to conduct compliance checks without a warrant. Defendant Desautels was not wearing a mask.

73. On information and belief, Defendant Desautels is still working in the presence of others without a mask, and is still not requiring his employees to wear a mask while working in the presence of others.

## **VIOLATIONS OF LAW**

### **Violation of Amended and Restated Executive Order 01-20 and its Addenda**

74. Paragraphs 1-73 above are incorporated by reference and realleged.

75. By conducting in-person business operations where Defendants' employees, including Defendant Desautels, worked in the presence of others without

wearing required cloth face coverings, Defendants violated Restated EO 01-20 and its addenda and guidance issued thereunder.

76. By refusing to follow the mandatory health and safety requirements around employee mask use, Defendants placed both employees and members of the public at large at risk due to the spread of COVID-19.

77. Pursuant to 20 V.S.A. § 40(b), Defendants are liable for civil penalties of not more than \$1,000 for each day for each violation of an executive order issued under Vermont's Emergency Management chapter and may be ordered to come into compliance with the provisions of the Emergency Management chapter, including executive orders and guidance issued thereunder.

### **RELIEF SOUGHT**

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully requests the Court award the following relief:

1. An Order requiring that Defendants comply with any and all COVID-19-related executive orders and addenda and guidance issued thereunder, and specifically requiring Defendants' employees, agents, and contractors to wear face coverings over their nose and mouth when in the presence of others at Defendants' place of business;
2. An Order adjudicating Defendants liable for the violations of Vermont statutes and executive orders set forth above;
3. An Order levying civil penalties against Defendants in accordance with 20 V.S.A. § 40(b);

4. An Order requiring Defendants to reimburse the State for its costs and expenses in investigating and prosecuting this action; and
5. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 23rd day of February, 2021.

Respectfully submitted,

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By:

  
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