



**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF HEALTH**

**IN THE MATTER OF:
Mi Sueno Disco
Violations of Executive Orders and
RI Department of Health Regulations**

**IMMEDIATE COMPLIANCE ORDER
HEALTHY ENVIRONMENT**

Now comes the Director of the Rhode Island Department of Health (“RIDOH”), as informed by the Chair (“Chair”) of the Rhode Island COVID-19 Enforcement Task Force (“Task Force”), and pursuant to R.I. Gen. Laws § 23-1-21, Executive Orders 20-32, and 20-67 (“Executive Orders”), and the RIDOH rules and regulations pertaining to Safe Activities By Covered Entities During the COVID-19 Emergency (216-RICR-50-15-7) (“Safe Regulations”), determines that Mi Sueno Disco (“Respondent”) is in violation of applicable Executive Orders and/or the Safe Regulations, which violations requires immediate action to protect the health, welfare, and safety of the public.

NEED FOR IMMEDIATE ACTION

On March 9, 2020, Governor Gina M. Raimondo declared a state of emergency for the State of Rhode Island due to the dangers to health and life posed by COVID-19. The Safe Regulations were promulgated as an emergency rule, pursuant to R.I. Gen. Laws § 42-35-2.10, based on a finding that an imminent peril to the public health, safety, or welfare required immediate promulgation of the rule, specifically that “[i]n order to prevent further spread of COVID-19 as individuals begin to leave their homes more frequently and establishments begin to reopen, protective measures must be followed and

implemented for individuals and establishments to resume operations so that the public's health and welfare is protected."

GROUND FOR DETERMINATION VIOLATIONS

- I. Respondent is a dining establishment located at 1070 Broad Street in Providence.
- II. Respondent is a covered entity, as defined in the Safe Regulations. As such, Respondent is required to comply with applicable Executive Orders and the Safe Regulations.
- III. On or about September 5, 2020, at approximately 11:25 p.m., a Task Force inspector conducted a Healthy Environment inspection of the Respondent. The inspector performed a checklist inspection of eleven (11) items based on the Safe Regulations. The inspector determined that Respondent scored a 4/11 for overall requirements, a 1/5 for dining requirements, and a 2/7 for bar requirements. The inspector noted in her report that the establishment was "out of control" due to the number of patrons inside the establishment. The Respondent admitted that it "can't control patrons from coming in". The inspector also noted that she was initially denied entry into the establishment and then had difficulty entering due to overcrowding.
- IV. Based on the foregoing, and in the absence of any other information to rebut the allegations, the Director of RIDOH has determined that Respondent is in present violation of multiple provisions of applicable Executive Orders and/or the Safe Regulations and that immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

The following violations stem from the September 5, 2020 inspection:

- I. Respondent is in violation of Executive Order 20-67, paragraph 19, which limits an establishment's indoor dining capacity to sixty-six percent (66%) of the establishment's regular seating capacity. The inspector estimated that there were more than one hundred (100) patrons in the establishment, most of which were standing. She also observed that the posted capacity limit was

ninety-six (96), thereby limiting the establishment's approved capacity to approximately sixty-five (65). Because the estimated number of patrons observed far exceed the establishment's allowable capacity limit, she concluded that the establishment was well over its capacity limit, in violation of the Safe Regulation. (See "Exhibit A")

- II. Respondent is in violation of Section 7.3(B) of the Safe Regulations, which requires all individuals in public or in an establishment to wear a cloth face covering unless physical distancing can be maintained easily and continuously, or an exemption applies, and Section 7.4.1(A)(3), which requires each covered entity to instruct any person entering an establishment to wear cloth face coverings except when physical distancing from others in the establishment is easily, continuously, and measurably maintained or an exception applies, and to deny access to any employee who refuses to wear a cloth face covering when required. The inspector observed approximately twenty (20) employees, of which three (3) were wearing the cloth face coverings improperly. The inspector observed two (2) employees with the cloth face coverings under their nose and one (1) employee with the cloth face covering under his chin. None of the three individuals claimed an exemption to the requirement.
- III. Respondent is in violation of Section 7.4.1(A)(1)(a) of the Safe Regulations, which requires establishments to ensure compliance with a plan that includes procedures relative to, among other things, physical distancing at all times, to the extent feasible, and additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible. The inspector observed that there were no measures in place to ensure that physical distancing was maintained and as a result of the large number of patrons, physical distancing was not maintained to the extent feasible.
- IV. Respondent is in violation of Section 7.4.2(A)(6) of the Safe Regulations, which requires that even with physical barriers between bar work areas and customers, staff may only serve seated

customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size. The inspector observed numerous occasions where the bartender served customers at the bar without serving them through an appropriately sized gap or opening in the barrier.

- V. Respondent is in violation of Section 7.4.2(A)(1)(a) of the Safe Regulations, which requires that tables be separated by at least eight (8) feet from table edge to table edge or to allow six (6) feet spacing between seated customers at different tables unless separated by a physical, non-porous barrier of an appropriate height. The inspector noted that there were many tables, which were occupied by patrons, but were not spaced at least eight feet apart or separated by a physical non-porous barrier.
- VI. Respondent is in violation of Section 7.4.2(A)(2) of the Safe Regulations, which prohibits self-service seating. The inspector observed that patrons were allowed to seat themselves without direction from the Respondent.
- VII. Respondent is in violation of Section 7.4.2(A)(3) of the Safe Regulations, which prohibits service to standing customers. The inspector observed multiple standing patrons being served beverages at the bar area by an employee.
- VIII. Respondent is in violation of Section 7.4.2(A)(1)(a) of the Safe Regulations, which requires that information be collected from all visitors and other entrants who have interacted with others present on site for a period of 15-minutes or more solely for the purposes of contact tracing. The inspector observed numerous patrons entering the establishment without any information being collected by the Respondent.
- IX. Respondent is in violation of Section 7.4.1.(A)(12) of the Safe Regulations, which prohibits congregating and/or mingling in an establishment or areas under the establishment's control. The inspector observed that there were more than one hundred (100) patrons inside the establishment, most of which were congregating and/or mingling. (See Exhibit "A").

- X. Respondent is in violation of Executive Order 20-61, which requires that all establishments open past 11:00 p.m. must, from 11:00 p.m. until closing, close their bar areas, including, but not limited to the bar counter and seating at the bar counter, and ensure that the bar area is not accessible to patrons. At or before 11:00 p.m. every night, all such bars, restaurants, and other establishments must rope off the bar area and make seating at the bar counter unavailable to customers. The inspector arrived at 11:25 p.m. and observed that patrons were still mingling and/or congregating in the bar area and that the bar area was not roped off, and concluded, therefore, that the bar area was accessible to patrons after 11:00 p.m.

ORDER

It is hereby **ORDERED**, that Respondent is immediately closed until such time as the following violations are remedied to the satisfaction of the Director of RIDOH:

- I. Respondent establishment shall be cleaned and sanitized in accordance with applicable CDC guidance.
- II. Each employee shall be interviewed by RIDOH to ensure that none has symptoms of COVID-19. In accordance with Section 7.4.1(A)(2), any employee exhibiting multiple symptoms of COVID-19 or who is COVID-19 positive shall be denied access to the establishment.
- III. Respondent shall develop and implement a written corrective plan that brings Respondent into compliance with applicable Executive Orders and the Safe Regulations. This written plan shall be incorporated into Respondent's control plan and shall, at a minimum, address how it will address the following violations.
- IV. Respondent shall limit its indoor dining capacity to sixty-six percent (66%) of its regular seating capacity.
- V. Respondent shall require all employees in its establishment to wear cloth face coverings unless physical distancing can be continuously maintained, or an exception applies. In accordance with

Section 7.4.1(3)(a) of the Safe Regulations, Respondent shall deny access to its establishment to any employee who refuses to wear a cloth face covering when required by the Safe Regulations unless an exception applies.

- VI. Respondent shall ensure compliance with its plan for safe operation, required pursuant to Section 7.4.1(A)(1) of the Safe Regulations, including compliance with, among other things, procedures consistent with the Safe Regulations relative to physical distancing at all times, to the extent feasible, and to include additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible.
- VII. Respondent shall ensure that even with physical barriers between bar work areas and customers, staff may only serve seated customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size.
- VIII. Respondent shall ensure that tables are situated to allow separation of at least eight (8) feet from table edge to table edge or to allow six (6) feet spacing between seated customers at different tables unless separated by a physical, non-porous barrier of an appropriate height.
- IX. Respondent shall ensure that service is made only to seated customers and that no service to standing customers occurs.
- X. Respondent shall ensure that information be collected from all visitors and other entrants who have interacted with others present on site for a period of 15-minutes or more solely for the purposes of contact tracing.
- XI. Respondent shall ensure that no congregating and/or mingling occurs within the establishment or any area under the establishment's control.
- XII. Respondent shall ensure that from 11:00 p.m. until closing, it closes its bar area, including, but not limited to the bar counter and seating at the bar counter, and to ensure that the bar area is

not accessible to patrons. The Respondent shall also ensure that at or before 11:00 p.m. every night, the bar area is roped off and seating at the bar counter is unavailable to customers.

Entered this 8th day of September 2020.

A handwritten signature in black ink, appearing to read "Nicole Alexander-Scott". The signature is fluid and cursive, with the first name "Nicole" being the most prominent.

Nicole Alexander-Scott, MD, MPH
Director
Rhode Island Department of Health
Cannon Building, Rm. 401
Three Capitol Hill
Providence, RI 02908

EXHIBIT A



