

STATE OF MICHIGAN  
MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

IN THE MATTER OF:

Zante, Inc.  
d/b/a Marlena's Bistro & Pizzeria  
909 Lincoln Ave.  
Holland, Michigan 49423

CASE TYPE: REVOCATION

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**EMERGENCY SUMMARY SUSPENSION ORDER PURSUANT TO MCL  
289.4125 AND MCL 24.292(2) AND NOTICE OF HEARING**

**GENERAL ALLEGATIONS**

1. The food establishment license issued to Zante, Inc. d/b/a Marlena's Bistro & Pizzeria (Marlena's) to operate a food service establishment is summarily suspended. This summary suspension proceeding is undertaken pursuant to the Michigan Department of Agriculture and Rural Development's (MDARD's) authority under Section 4125 of the Michigan Food Law, MCL 289.1101 *et seq.*, and in accordance with the Administrative Procedures Act, MCL 24.201 *et seq.*

**BACKGROUND**

2. Marlena's operates a food establishment located at 909 Lincoln Avenue in Holland, Michigan. Marlena's food establishment license is issued by MDARD.

3. Pursuant to the Food Law, if the MDARD Director determines that an imminent threat to the public health, safety, or welfare exists, the MDARD Director may summarily suspend a food establishment license.

4. Additionally, the Administrative Procedures Act, provides that if an agency concludes that the health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later. See MCL 24.292(2).

### **Michigan's efforts to curb Covid-19**

5. On March 10, 2020, Governor Whitmer issued Executive Order 2020-4 declaring a state of emergency due to the breakout of COVID-19 in the State of Michigan. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19 is caused by a new strain of coronavirus not previously identified in humans and it easily spreads between persons. To date, there have been over 426,000 confirmed cases of COVID-19 in the State of Michigan, resulting in over 10,400 deaths. There is currently no vaccine or antiviral treatment for this disease available to the general public.

6. The Public Health Code gives the Michigan Department of Health and Human Services (MDHHS) "general supervision of the interests of health and life of people of this state," MCL 333.2221(2), and requires it to "endeavor to prevent disease, prolong life, and promote the public health," MCL 333.2221(1). MDHHS may "[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law

in the department.” MCL 333.2226(d). Further, MDHHS is authorized to issue emergency orders to address epidemics, pursuant to MCL 333.2253(1):

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.

7. On January 13, 2021, MDHHS issued its most recent Gatherings and Face Mask Order, which took effect on January 16, 2021, and remains in effect until January 31, 2021. The January 13, 2021 Order states that, “[t]he state death rate is 7.7 deaths per million people; this is six times higher than it was in early October, and there are more than 500 weekly deaths in Michigan attributable to COVID-19.” It continues by stating that action is necessary “to control the high rate of spread in order to save lives as we push through this difficult phase of the pandemic.” The order concludes that “the COVID-19 pandemic continues to constitute an epidemic in Michigan.”

8. MDHHS’s order generally prohibits indoor gatherings at non-residential venues. See 12/7/2020 Gatherings and Face Mask Order, section 2(a)(2). A “gathering” is “any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.” *Id.* at section 1(g). The order prohibits indoor gatherings at food service establishments except in “custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens.” *Id.* at section 3(b)(1).

9. Further, subject to limited exceptions, “[a]ll persons participating in gatherings are required to wear a face mask.” *Id.* at section 7(a). “Except as

provided elsewhere in [the] order, a person responsible for a business . . . must prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.” *Id.* at section 7(c).

10. Violations of the Gatherings and Face Mask Order constitute misdemeanors and are punishable by up to six months imprisonment and certain fines. See *id.* at section 10(e), (h).

### **Marlena’s operations in violation of MDHHS’s order**

11. On December 2, 2020, the Allegan County Health Department issued Marlena’s an “Warning Order Finding Imminent Danger to the Public Health and Requiring Corrective Action” (Health Department Order). The Health Department Order stated that Marlena’s was “hosting customers inside” and “allowing for dine in service.”

12. The Health Department Order required that Marlena’s to comply with all applicable public health orders and to temporarily close for 72 hours.

13. In spite of the Health Department’s Order, Marlena’s continued to offer indoor dining. As a result, the Allegan County Health Department issued Marlena’s a “Cease and Desist Order” (Allegan Cease and Desist Order). The Allegan Cease and Desist Order found that Marlena’s operations constitute an imminent and substantial danger to the public health.

14. In spite of the Allegan Cease and Desist Order, Marlena’s continued to offer indoor dining, not require facial coverings, and not require social distancing.

15. On December 30, 2020, MDARD issued Marlena's an "Order to Cease and Desist Food Operations" (Cease and Desist Order). MDARD's Cease and Desist Order was delivered via UPS on December 31, 2020.

16. On multiple dates the Allegan County Health Department conducted follow-up surveillance at Marlena's. On each occasion the Health Department documented that the firm was operating in violation of the MDARD's Cease and Desist Order, was operating in violation of MDHHS's Gatherings and Face Mask Order, and was continuing to offer indoor dining.

17. As of January 19, 2021, Allegan County, where Marlena's is located, has had 6,550 confirmed and probable cases of Covid-19 and 93 deaths from Covid-19.<sup>1</sup>

18. Between January 5, 2021, and January 14, 2021, Allegan County, where Marlena's is located, had 295 confirmed cases and 64 probable cases of Covid-19 and 7 deaths from Covid-19.<sup>2</sup>

### **SUMMARY SUSPENSION**

19. The Food Law provides that MDARD's Director can summarily suspend a food establishment license upon a determination that an imminent threat to the public health, safety, or welfare exists. MCL 289.4125(4).

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<sup>1</sup> See [https://www.michigan.gov/coronavirus/0,9753,7-406-98163\\_98173---,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html), accessed January 19, 2021.

<sup>2</sup> See *Id.*

20. MDARD's Director has determined that Marlena's continued offering of indoor dining, failure to require social distancing, and failure to require staff and customers to wear facial coverings creates an imminent threat to the public health, safety, and welfare.

21. Additionally, consistent with the Administrative Procedures Act, MDARD finds that emergency action is required because Marlena's current operations pose a significant risk to the community's health, safety, and welfare.

22. For the foregoing reasons:

A. Effective immediately, Marlena's food establishment license is summarily suspended;

B. MDARD's December 30, 2020 Cease and Desist Order is replaced with this summary suspension; and

C. The Michigan Office of Administrative Hearings and Rules will hold a hearing on MDARD's summary suspension of Marlena's food establishment license on February 1, 2021, at 9:00 a.m. via video conference.



Gary McDowell, Director  
Michigan Department of Agriculture  
& Rural Development

Date: January 20, 2021