

Date: August 29, 2020
From: Ricardo Beas
To: Attorney Bruno W. Katz
Wilson Elser
Re: Your Email Regarding Sprouts Chula Vista's Face Covering Policy
Illegal Denial of Services, Discrimination, and Violation of Rights.

Dear Bruno,

Thank you for your email of August 26, 2020 (attached below) regarding my communications with Sprouts Chula Vista and their store's refusal to allow me to enter without a mask or face shield, regardless of any exemption allowed by city, county and state orders and guidance regarding the wearing of face covering due to COVID-19, which exemption applies to me.

Your following statement is incorrect as portrayed by you and I disagree with it:

*"The State of California through the **Department of Public Health** (CDPH) issued an order stating face coverings **must be worn** in public settings and the County of San Diego through its Public Health Officer has issued its own order requiring the use of face coverings. The City of Chula Vista also issued its own order which is attached."*

While the order from the County and the resolution/order from Chula Vista mention the requirement of the use of mask, they claim their authority and point to the CDPH guidelines on face covering. As noted in its title, "Guidance for the Use of Face Coverings," this document is not a legal order, it is "guidance" for people to follow if they deem appropriate, it is optional.¹

This Guidance came out around the same time that Governor Newsom recommended the usage of masks, but as he noted in his press briefing of July 27, 2020, neither he nor the executive agency he commands, CDPH, have a legal right or the authority to force anyone to use a mask and neither do any county or cities in the state. Newsom said,

*"Let me thank all of you for your continued patience of the theme to wear face coverings, to practice the social distancing, the physical distancing; and please, in closing, again, I **CANNOT MANDATE ANYTHING, I can only help influence.**"²*

You stated that my medical "exemption does not change (your) client's obligation to its employees and customers to abide by the State of California, County of San Diego and City of Chula Vista Health Orders." You are correct, you must comply with the City and County orders, but they refer businesses directly to the CDPH Guidance document as to the exemptions. The CDPH Guidance exemption section reads in part as follows:

"The following individuals ARE EXEMPT from wearing a face covering:

¹ See the CDPH Guidance document, at <https://tinyurl.com/CDPH-COVID-19-FacialCoverings>.

² See the video of Gov. Newsom's press conference on his authority regarding mandating social distancing and usage of masks, at <https://tinyurl.com/Newsom-COVID-Limited-Authority>.

Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.”

As you acknowledged in your letter, I have a medical condition, and based on the unambiguous, as well as the legal meaning of the phrase “*ARE EXEMPT*,” this clearly means that Sprouts must allow me to enter the store without any mask or face shield.

Please note what the order does not say:

1. It does not say that because I cannot and do not want to wear a mask or face shield due to my medical condition, that then your store can refuse my entry, contrary to the City and County orders and CDPH Guidance document.
2. It does not say that if I have a medical condition and decide for my own wellbeing not to wear a mask or face shield, that then you can refuse my entry into the store and can violate my God-given, Natural, Common Law, Federal and CA state constitutional rights, as I have described in all my writings, which the owner of the involved Sprouts store received from me,³ and which I adopt herein in their entirety by reference and incorporation.
3. It does not say, if you can provide home delivery and curbside service, then you can refuse access to the store.
4. It does not say that Sprouts can ignore my medical condition exemption, while at the same time violating my consumer rights under California Civil Code 51(b), which reads:

*“All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, **religion**, ancestry, national origin, **disability, medical condition**, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status **are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.**”*

In your email, you state that Sprouts would allow me to use a face shield instead of a mask. This offer is not adequate and makes no sense from the following perspectives:

1. The involved orders do not mention face shields as an alternative to face coverings or masks (hereinafter masks) for store customers.

³ See my letter to the San Diego County Counsel and District Attorney where I file my complaint against Sprouts for violating the County health order by not allowing me to enter their store based on my medical condition, at <https://tinyurl.com/RBLetter-COVID-NewsomAuthority>.

2. You recognize that masks do inhibit breathing by restricting oxygen, just as they increase the inhalation of carbon dioxide. As you state about face shields, *“this has been recognized **as not inhibiting a breathing condition,**”* implying that masks do.
3. You recognize that face shields do not inhibit a breathing condition, and while I don't agree with that statement in its totality, it does point to the fact that face shields are completely open from the bottom, and therefore are inefficient in containing any virus a wearer may have, potentially contaminating any person or store product in whatever area that person would be walking in as if he had no face coverings at all.

The above is very obvious and indicates to me that more than worried about violating my rights, Sprouts wants to give the appearance to other customers that face shields are acceptable and help stop the spread of COVID-19 and that Sprouts is protecting them, which might give its clients a false sense of security, assuming face covering and masks even work.

4. There is absolutely no science from the CDC or otherwise that shows that a face shield will prevent in any way the spread of any virus.

You note that *“the Americans with Disabilities Act ... (does) not provide an unlimited accommodation, just reasonable accommodations,”* but it does not allow for **discrimination** either, especially when the health orders allow for my exemption, as the Americans with Disabilities Act protects employees from **discrimination** based on a disability, such as my medical condition. Reasonable accommodation is to allow what the law allows, not what the owner of the business wants to allow, regardless of a violation of any person's rights to shop, as noted in California Civil Code 51(b), and what the law requires and mandates is that I be provided: *“full and **equal** accommodations.”*

While I am asking that I be allowed into your store due to my medication condition and based on the CDPH exemption, I will point out that regardless of any recommendation by the CDC and our County health department on the issue of whether masks even work, I further note that overwhelming science confirms that masks, and even much less facial coverings, cannot stop the spread of any virus, like COVID-19, making it unnecessary in order to shop. Proper etiquette and reasonable distancing can do more than necessary to protect all store customers.

The most recent analysis of such mask studies was done by world-renowned Professor of Physics Denis G. Rancourt, PhD, in his scientific article, titled *“Masks Don't Work: A review of science relevant to COVID19 social policy”*.

In his summary/abstract, he writes the following:

*“**Masks and respirators do not work.** There have been extensive randomized controlled trial (RCT) studies, and meta-analysis reviews of RCT studies, which all show that masks and respirators do not work to prevent respiratory influenza-like illnesses, or respiratory illnesses believed to be transmitted by droplets and aerosol particles.*

*Furthermore, the relevant known physics and biology, which I review, are such that masks and respirators should not work. It would be a paradox if masks and respirators worked, given what we know about viral respiratory diseases: **The main transmission path is long residence-time aerosol particles (< 2.5 μm), which are too fine to be blocked, and the minimum-infective-dose is smaller than one aerosol particle.***⁴

In layman terms, you cannot stop a mosquito with a chain-link fence. Further, the above studies are based on using medical-grade masks, including N95, and respirators with air filtering cartridges. If these don't work to stop the transmission of the virus, makeshift and commercial mouth covers sold in stores and online, would work even less, or put bluntly, would not work at all for their intended purpose. Even such product packages state that they do not stop virus transmission.

If Sprouts were to analyze our situation more carefully, it would see that the existing orders do allow and require access to a person with exemptions without the use of masks. It is businesses like Sprouts that are misinterpreting the orders and are taking them too far, and I don't blame your client: As any fictitious entity, you want to survive and avoid confrontation with any state agencies, but that does not mean that you can violate someone's rights in the process, and as to me, if I do not allow any government entity to violate my rights, I would even less allow a fictitious entity, a creature of the state, given life simply by government permits to exist, to violate such rights.

As noted in my "Notice of Intent to Visit Your Establishment", which I provided Sprouts before and after their refusal to allow me to enter their store, emailed directly to the involved store owner, I do not have COVID-19 and I do not have any symptoms associated with such flu-like diseases. I will practice reasonable distance from other customers and will follow common sanitary practices, all for the same reasons for which you purportedly want me to put on a useless face shield, to do my part in reducing any spread of COVID-19.

Also, as noted in my Notice, your client's establishment has no legal responsibility or liability, nor will it get a fine for allowing me to be in their premises without a mask when I have expressed my legal right and intent not to do so. I take full responsibility for not wearing a mask and hold Sprouts harmless for following the County Order regarding exemptions to individuals as to wearing a mask when in public.

If you were to want to argue that even if I don't have any COVID-19 symptoms, that somehow I might still infect someone in your store, be aware that the World Health Organization, which the City and County health orders almost seem to point at as the highest authority when it comes to health and COVID-19, has made it clear that asymptomatic individuals "very rarely" transmit the virus.⁵

Another thing to consider is that the CDC issued new guidelines on COVID-19 testing that says "*that people who have been in close contact with an infected individual — typically defined as being within six*

⁴ See Rancourt's scientific article on the use of masks, at <https://tinyurl.com/Rancourt-Masks-Dont-Work>.

⁵ See the June 8, 2020 virtual press conference by the World Health Organization, with Director Tedros Adhanom Ghebreyesus present, confirming the statements by Dr. Maria Van Kerkhove that asymptomatic persons "*very rarely*" transmit COVID-19 to others. Short clip at <https://tinyurl.com/WHO-COVID-Transmission-Rare-3>, full statement at minutes 34:05–34:47, and 35:20, at <https://tinyurl.com/WHO-COVID-Transmission-Rare>.

*feet of a person with the coronavirus and for at least 15 minutes — ‘do not necessarily need a test’ if they do not have symptoms.”*⁶

The implications of this change in policy are twofold. On one hand, it shows that even if you don't have on any facial coverings and **you are within six feet** of a person with the coronavirus **for at least 15 minutes**, you might still not contract the virus (thus that is why you would not need testing). On the other hand, it also shows just how difficult it is to transmit the virus.

In other words, if a person could potentially get infected or can infect someone else **only after** 15 minutes of close proximity with someone, how can a healthy asymptomatic person give the virus to another person in a store when the maximum close encounter with any client would be in the area of seconds, not even a minute. This indicates that casual encounters with any individual are extremely unlikely to cause transmission of the virus, making it completely unnecessary to wear masks.

Further, face coverings and masks do pose health risks and problems, (1) to everyone in the form of a reduction in intake of oxygen and in the increased inhalation of carbon dioxide stuck in the mask when we exhale,⁷ and (2) by affecting negatively persons with certain health conditions, including heart conditions and breathing problems. That is why the CDPH Guidelines on Facial Coverings made exemptions: Not just for your client to read and ignore them, but to put them in place and comply with them. The order is clear: make allowances for treating the persons indicated in the exemption section of the Guidelines differently. The order does not make any exemptions, such as stating that as long as customers were a face shield, or if you provide delivery or curbside service, that then you can violate their rights and deny them access to the store. This is obvious, and regardless of how many times your letter says that Sprouts is following the County and City orders, it is doing the opposite, it is violating them.

By the way, the more appropriate question your client, his store, employees and customers should be asking themselves is: If masks, distancing and proper hygiene practices work, why would anyone worry about coming across an occasional person not wearing a mask if that person is not showing any symptoms, such as sneezing or coughing, and is practicing appropriate social distancing?

So no, your client, is not following either the law, logic or the actual science, nor providing reasonable accommodations, and is in the process discriminating against me and violating my rights.

For all the reasons noted above, I am *“not imposing an undue hardship and safety risk to (Sprouts Chula Vista) staff and other customers”* as your email claims. Yes, COVID-19 may be a substantial risk to health, but I don't have it, and have no plans on going to your store if I do or if I experience any of its known symptoms, so there is no threat from me visiting your store as I request.

Finally, you appear to have misunderstood my email message to the store owner as to me visiting the store. I noted that because he said you would be calling me on Monday and I had not heard from you as of Wednesday, I was simply letting him know that I would go to the store and that I would film my encounter, but with no intent to cause a scene, simply to tape if I was not allowed to go in or if I would

⁶ See The New York Times article from August 25, 2020, titled *“C.D.C. Now Says People Without Covid-19 Symptoms Do Not Need Testing,”* at <https://tinyurl.com/CDC-COVID19-Testing-2020-08-24>.

⁷ See testing performed for oxygen and carbon dioxide while using a mask, using professional-grade air monitoring devices, at minute -29:20, <https://tinyurl.com/Face-Masks-Oxygen-Depletion>.

be refused entry based on the owner's erroneous and abusive interpretation of the involved orders, resolutions, and guidelines. Now that you have made it clear in writing that the owner will not allow me in the store without a mask or a face shield, there is no need for me to go to the store to see if they are now following the law. You confirmed they will not comply.

This is your client's opportunity to correct his actions and modify his store policies. In my prior correspondence with the store owner I shared photos that showed Walmart's store entrance sign and company policy on facial coverings,⁸ that shows that Walmart respects its customers and follows the city and county health orders to the letter. Home Depot and many stores are doing the same, as I shop in many stores in my area without a face covering and without a problem, beyond a store staff simply confirming if I have a medical exemption.

I have never had any confrontations with any of these stores' customers, whether while making a line outside or while shopping. These businesses like Walmart, who has won my loyalty for life, not only respect me, but they understand that policies like yours can most likely result in not only a violation of their customers' rights and loss of their patronage, but also in unnecessary, time-consuming and costly attorney's fees and litigation, in which potential lawsuit, based on all the evidence I have provided herein, a company like the one you represent would most likely lose.

I ask your client to reconsider his policy and that he respects my right to enter his store without a mask or face shield and at regular business hours for the reasons noted herein. I suggest that Sprouts supplements its window signs acknowledging and informing customers that there are exemptions allowed as to wearing face coverings or masks, as Walmart does. To continue with the existing store policy will be arbitrary and capricious and a direct violation of my consumer rights, among others.

As a note, it is not my intention to harass, intimidate, offend, conspire, blackmail, coerce or cause anxiety, alarm, or distress. This document and its attachments and references are presented with honorable and peaceful intentions and are expressly for your client's benefit to provide him with due process and a good-faith opportunity to correct his behavior as requested herein.

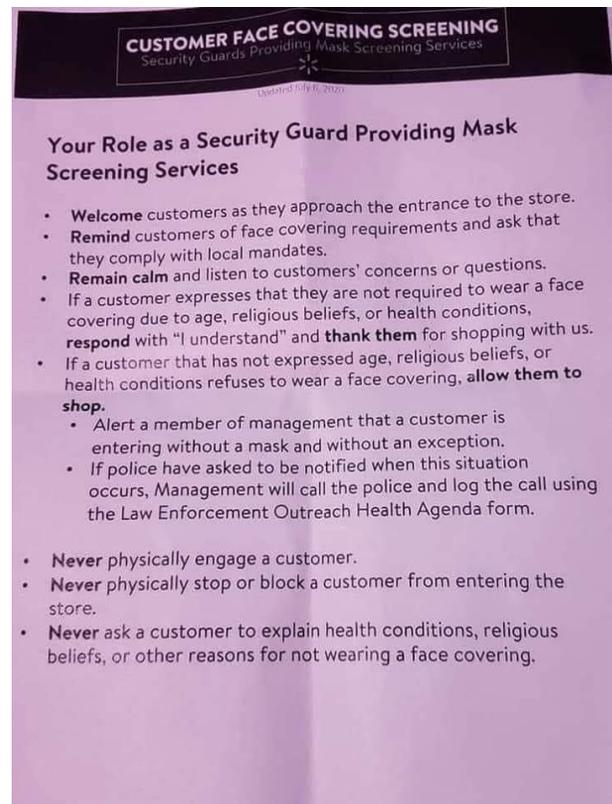
Please let me know within the next 7 calendar days how you plan on proceeding.

Respectfully submitted,

Ricardo Beas

⁸ Photos of Walmart's face covering policy and the sign outside their store showing they comply with the County and City health orders regarding exemptions to the use of facial coverings are below my response.

WALMART SIGN AND POLICY ON FACE COVERINGS



EMAIL FROM ATTORNEY BRUNO W. KATZ, AUGUST 26, 2020

Dear Mr. Beas:

This office has been retained to represent Sprouts Farmers Market Chula Vista as to your request to shop without a mask. Going forward please address any legal concerns directly to me and my office.

As you are aware, the country and the State of California are still engaged in a once in a hundred-year global pandemic as a result of COVID-19. COVID-19 has been determined to be a direct threat to the health and safety of the general public. Along those lines, the Centers for Disease Control (CDC) has made it clear the use face masks or face coverings are part of a comprehensive plan to help slow the spread of COVID-19. The State of California through the Department of Public Health issued an order stating face coverings must be worn in public settings and the County of San Diego through its Public Health Officer has issued its own order requiring the use of face coverings. The City of Chula Vista also issued its own order which is attached. There are limited exceptions which include persons with a medical condition that prevents the wearing a face mask. You have stated that you fall into that exception and our client is not asking you to produce any documentation to support this statement.

However, contrary to your assertion, such an exemption does not change our client's obligation to its employees and customers to abide by the State of California, County of San Diego and City of Chula Vista Health Orders and to take measures to protect the health and safety of both its employees and its customers. A private business even without a pandemic has the right to control customers or visitors onto its property if they are not wearing a mask. This is similar to the "no shirt, no shoes, no service"

policy that you commonly see at businesses. Moreover, the health and safety issues further support such a position in an indoor setting and in an establishment involved in the sale of food products.

Our client understands and has attempted to accommodate your request while still protecting its employees and customers and abiding by the Health Orders. Sprouts Farmers Market Chula Vista has provided clear signage and information of the requirement to wear a face covering to its customers as well as taken measures to as social distancing in an effort to keep customers and staff safe. Moreover, as set forth above, it has a clear policy that it has the right to refuse entry or service to anyone who is not complying with the requirements as required by the Health Orders. In recognizing your statement as to having a medical issue, Sprouts Farmers Market Chula Vista has offered you the following reasonable accommodations: 1) the use of a face shield as an alternative to a mask (This has been recognized as not inhibiting a breathing condition.); and 2) offered to personally shop for you to meet your needs.

The Americans with Disabilities Act (ADA) and the California Unruh Act, to which you cite, do not provide an unlimited accommodation, just reasonable accommodations. Our client has done exactly that and is still willing to offer those accommodations so you can shop. Your claim as to unfettered right to shop without a mask is not protected under the law. Sprouts Farmers Market Chula Vista as well as any other business has the right to honor the face covering orders and take steps that are in line with public health requirements to those like yourself who state a medical condition that does not allow them to wear a mask. The ADA and the Unruh Civil Acts act do not provide a blanket exemption to persons who claim an inability to wear mask due to a medical condition to enter a place of business without any restrictions. Rather a business has to comply and provide reasonable accommodations while also complying with the direct threat of COVID-19 and the legitimate safety requirements necessary for safe operations.

In summary, our client, Sprouts Farmers Market Chula Vista, is following the law as to face coverings and has and is still willing to provide you a reasonable accommodation to allow you to shop while not imposing an undue hardship and safety risk to its staff and other customers. The direct threat of COVID-19 is a substantial risk to the health and safety of all customers and staff and your request to shop without any face covering does not override the direct threat and requirement for businesses to protect the general public, both those with and without disabilities.

Due to the public health issues, please confirm that you are willing to move forward so our client can provide reasonable accommodations while also meeting its requirement to protect the overall health and safety requirements of shopping in the store. Sprouts Farmers Market Chula Vista will work with you to provide you reasonable accommodations.

Also we understand that you have communicated that you intend to try and enter our client's business without a face covering despite the accommodations previously offered and will be bringing someone to film the encounter. Please be aware that our client does not wish to have any confrontation and will act professionally as it has throughout this process. However, if you wish to cause a disturbance, our client will exercise its options to protect its staff and customers.

Thank you for your attention and understanding and we look forward to working with you, until these pandemic restrictions are lifted, so you can get your shopping completed in a manner that is reasonable and safe for all.

Regards, Bruno W. Katz