

IN THE CIRCUIT COURT OF THE  
19TH JUDICIAL CIRCUIT IN AND FOR  
ST. LUCIE COUNTY, FLORIDA

GENERAL CIVIL DIVISION

CASE NO. 2018-CA-2259

BENIGNO DIAZ;  
TACO TRAP, LLC;  
BRIAN PEFFER; and  
CREATIVE CHEF ON WHEELS LLC,

Plaintiffs,

vs.

CITY OF FORT PIERCE, FLORIDA,

Defendant.

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**CONSENT FINAL JUDGMENT**

This Consent Judgment is entered through stipulation by and between Plaintiffs Benigno Diaz; Taco Trap, LLC; Brian Pepper; and Creative Chef on Wheels LLC; and Defendant City of Fort Pierce (collectively, the “Parties”). The Parties have all decided to fully settle and resolve this dispute. Pursuant to their settlement, the Parties jointly agree to this Consent Judgment and jointly stipulate to all of the terms and relief provided herein.

By stipulation of the Parties<sup>1</sup>, it is hereby ORDERED and ADJUDGED as follows:

**STIPULATED JURISDICTION AND VENUE**

Plaintiffs filed a civil action against the Defendant in the Circuit Court of the 19th Judicial Circuit in and for St. Lucie County, Florida, Case No. 2018-CA-2259 (the “Lawsuit”).

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<sup>1</sup> It is specifically noted that the Court, in particular Judge Metzger, has not independently made any findings or conclusions in this case. As a result, this final judgment is being entered solely on the basis that the parties have stipulated and consented to its entry, terms, findings and conclusions.

The Circuit Court has jurisdiction over this matter pursuant to Section 86.011 of the Florida Statutes.

Venue is proper in the 19th Judicial Circuit in and for St. Lucie County, Florida because most of the parties and the Defendant are located in the 19th Judicial Circuit, and the dispute arose in the circuit.

### **STIPULATED FACTUAL BACKGROUND**

Plaintiffs are food truck owners and operators who wish to accept invitations from private property owners in Fort Pierce to operate their food trucks on those owners' properties. At the time this Lawsuit was filed, the Challenged Restriction was preventing Plaintiffs from accepting invitations from private property owners in Fort Pierce. The ordinance, which at the time was found in Chapter 9, Article IV, Section 9-111(b) of the Fort Pierce Code of Ordinances, prohibited Plaintiffs from operating within 500 feet of any business that sells a similar product (the "Challenged Restriction").

On December 6, 2018, Plaintiffs filed this lawsuit seeking injunctive relief and declaratory relief that the Challenged Restriction violated the Florida Constitution's Due Process and Equal Protection Clauses. *See* Fla. Const. art. I, §§ 2, 9. Plaintiffs also seek nominal damages and an award of costs. On January 3, 2019, the Court denied Defendant's Motion to Dismiss, and Defendant filed its Answer and Affirmative Defenses on January 23, 2019.

On February 22, 2019, a predecessor Judge, Judge Mirman, held a hearing on Plaintiffs' Verified Motion for Preliminary Injunction. Plaintiffs sought a temporary injunction to prevent enforcement of the Ordinance pending the outcome of the litigation. Later that same day, Judge Mirman issued its Order Granting Plaintiffs' Verified Motion for Preliminary Injunction.

On October 21, 2019, Defendant repealed the Challenged Restriction in full. The Parties have agreed to settle their dispute, and this Consent Judgment was prepared by the Parties as part of their settlement. The Parties acknowledge and agree they are entering into this Consent Judgment because they believe it is in their best interest to conclude the litigation. Although Defendant no longer contests Counts I and II of Plaintiffs' Complaint, Defendant makes no admission of liability for financial damage to Plaintiffs. Defendant consents to the payment of nominal damages solely in furtherance of resolving the litigation.

### **STIPULATED LEGAL FINDINGS**

The Parties stipulate that the Challenged Restriction violated Plaintiffs' Due Process and Equal Protection rights under the Florida Constitution because the Challenged Restriction was not rationally related to any legitimate government interest. *See, e.g., Chicago Title Ins. Co. v. Butler*, 770 So. 2d at 1215–20 (holding that law restricting competition violated the Florida Constitution); *Dep't of Ins. v. Dade Cty. Consumer Advocate's Office*, 492 So. 2d 1032, 1034 (Fla. 1986) (same); *United Gas Pipeline Co. v. Bevis*, 336 So. 2d 560, 563–64 (Fla. 1976) (same); *Eskind*, 159 So. 2d at 212 (same); *Stadnik v. Shell's City, Inc.*, 140 So. 2d 871, 875 (Fla. 1962) (same); *Larson v. Lesser*, 106 So. 2d 188, 191–92 (Fla. 1958) (same); *Miles Laboratories v. Eckerd*, 73 So. 2d 680, 681 (Fla. 1954) (same); *Lee v. Delmar*, 66 So. 2d 252, 255 (Fla. 1953) (same); *Seagrams-Distillers Corp. v. Ben Greene, Inc.*, 54 So. 2d 235, 235–37 (Fla. 1951) (same); *Liquor Store v. Continental Distilling Corp.*, 40 So. 2d 371, 374–76 (same).

### **STIPULATED FINAL JUDGMENT**

As stipulated by the Parties, it is therefore ORDERED AND ADJUDGED that a consent judgment is entered (without judicial findings or conclusions), and let execution issue forthwith, awarding the following relief to Plaintiffs:

(i) Final declaratory relief that the Challenged Restriction that was contained in Fort Pierce Code of Ordinances, Chapter 9, Article IV, Section 9-111(b) at the time this Lawsuit was filed violated the Plaintiffs' Due Process and Equal Protection rights guaranteed by the Florida Constitution.

(ii) Nominal damages awarded to each Plaintiff of One Dollar (\$1.00) per Plaintiff.

(iii) Costs awarded to Plaintiffs in the total amount of Two-Thousand Five-Hundred Thirty-Three Dollars and Thirty-One Cents (\$2,533.31).

(iv) If a dispute arises over the enforcement this Consent Judgment, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

**Agreed to on behalf of the Parties:**


Dated: August 27, 2021

/s/ Justin Pearson  
Justin Pearson  
Florida Office Managing Attorney  
Institute for Justice  
Attorney for Plaintiffs

Dated: August 27, 2021

/s/ Tanya M. Earley  
Tanya M. Earley  
Interim City Attorney  
Office of the City Attorney of Fort Pierce, Florida  
Attorney for the Defendant

**DONE AND ORDERED** in Fort Pierce, Florida this 27<sup>th</sup> day of August, 2021.

  
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ELIZABETH METZGER  
CIRCUIT JUDGE

**SERVICE LIST**

**A COPY OF THIS ORDER IS BEING SERVED ON THE FOLLOWING PARTIES VIA THE E-FILING PORTAL:**

Justin Pearson, Esq., jpearson@ij.org; rramirez@ij.org

James Knight, Esq., jknight@ij.org

Tanya Earley, Esq., tearley@cityoffortpierce.com