

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

TALLEYWHACKER, INC. d/b/a ARIZONA)
 PETE’S COUNTRY MUSIC SALOON,)
 ASHEVILLE GOLF & TRAVEL, INC. d/b/a)
 THE TREASURE CLUB ASHEVILLE, BLL)
 ENTERPRISES, INC. d/b/a LEATHER &)
 LACE SOUTH, B & S ENTERPRISES, INC.)
 d/b/a TASSELS, DBD#1, INC. d/b/a CRAZY)
 HORSE CHARLOTTE, DBLL, INC. d/b/a)
 LEATHER AND LACE GASTONIA,)
 DDDD, INC. d/b/a GOLD CLUB,)
 EDISON’S LOUNGE LLC d/b/a EDISON’S)
 LOUNGE GENTLEMEN’S CLUB, GIST)
 AND HENDRIX, LLC d/b/a SECRETS)
 CABARET, JACKSONVILLE GOLF AND)
 TRAVEL LLC d/b/a PLATINUM)
 GENTLEMEN’S CLUB, JMB GOLF &)
 TRAVEL, INC. d/b/a THE TREASURE)
 CLUB GREENSBORO, LEATHER AND)
 LACE, INC. d/b/a LEATHER & LACE)
 UNIVERSITY, LONG VIEW GOLF &)
 TRAVEL, INC. d/b/a THE TREASURE)
 CLUB, MISTYLOU INVESTMENTS, LLC)
 d/b/a TOBIES GENTLEMEN’S LOUNGE,)
 NATIONAL GOLF DISTRIBUTORS, LLC)
 d/b/a MIRAGE EXOTIC NIGHTLIFE,)
 ONSLOW GOLF AND TRAVEL LLC d/b/a)
 STILETTO GENTLEMEN’S CLUB, RDU)
 GOLF & TRAVEL, LLC d/b/a PURE)
 GOLD, RPS HOLDINGS, LLC d/b/a)
 CAPITAL CABARET/747 CHOPHOUSE,)
 SOUTHERN PINES GOLF)
 DISTRIBUTORS, LLC d/b/a CHEETAH,)
 TD OPERATIONS, LLC d/b/a LIMELIGHT,)
 TMC RESTAURANT OF CHARLOTTE,)
 LLC d/b/a THE MEN’S CLUB OF)
 CHARLOTTE, TOP SHELF)
 ENTERTAINMENT, LLC d/b/a CLUB)
 ONYX, TRIAD GOLF & TRAVEL, INC.)
 d/b/a CENTERFOLDS, TWDDD, INC. d/b/a)
 SCORES, WILMINGTON GOLF)
 DISTRIBUTORS, LLC d/b/a CHEETAH, 3)

Civil Action No. _____

MB HOSPITALITY, LLC d/b/a)
 SAVANNAH’S GENTLEMEN’S CLUB,)
 200 W. WOODLAWN ROAD, INC. d/b/a)
 GENTLEMEN’S CLUB, 511 COTANCHE)
 ST. ENTERTAINMENT, LLC d/b/a STILL)
 LIFE,)
)
 Plaintiffs,)
)
 v.)
)
 THE HONORABLE ROY A. COOPER, III,)
 IN HIS OFFICIAL CAPACITY AS)
 GOVERNOR OF THE STATE OF NORTH)
 CAROLINA,)
)
 Defendant.)

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF,
DAMAGES, ATTORNEY’S FEES AND DEMAND FOR JURY TRIAL**

Plaintiffs Talleywhacker, Inc. d/b/a Arizona Pete’s Country Music Saloon, Asheville Golf & Travel, Inc. d/b/a The Treasure Club Asheville, BLL Enterprises, Inc. d/b/a Leather & Lace South, B & S Enterprises, Inc. d/b/a Tassels, DBD#1, Inc. d/b/a Crazy Horse Charlotte, DBLL, Inc. d/b/a Leather and Lace Gastonia, DDDD, Inc. d/b/a Gold Club, Edison’s Lounge LLC d/b/a Edison’s Lounge Gentlemen’s Club, Gist and Hendrix, LLC d/b/a Secrets Cabaret, Jacksonville Golf And Travel LLC d/b/a Platinum Gentlemen’s Club, JMB Golf & Travel, Inc. d/b/a The Treasure Club Greensboro, Leather and Lace, Inc. d/b/a Leather & Lace University, Long View Golf & Travel, Inc. d/b/a The Treasure Club, Mistylou Investments, LLC d/b/a Tobies Gentlemen’s Lounge, National Golf Distributors, LLC d/b/a Mirage Exotic Nightlife, Onslow Golf and Travel LLC d/b/a Stiletto Gentlemen’s Club, RDU Golf & Travel, LLC d/b/a Pure Gold, RPS Holdings, LLC d/b/a Capital Cabaret/747 Chophouse, Southern Pines Golf Distributors, LLC d/b/a Cheetah, TD Operations, LLC d/b/a Limelight, TMC Restaurant Of Charlotte, LLC d/b/a The

Men's Club of Charlotte, Top Shelf Entertainment, LLC d/b/a Club Onyx, Triad Golf & Travel, Inc. d/b/a Centerfolds, TWDDD, Inc. d/b/a Scores, Wilmington Golf Distributors, LLC d/b/a Cheetah, 3 MB Hospitality, LLC d/b/a Savannah's Gentlemen's Club, 200 W. Woodlawn Road, Inc. d/b/a Gentlemen's Club, 511 Cotanche St. Entertainment, LLC d/b/a Still Life ("Plaintiffs"), by and through the undersigned attorneys, complain of Defendant Governor Roy A. Cooper, III, in his Official Capacity as Governor of The State of North Carolina (the "Governor"), and herein allege and state as follows:

I. INTRODUCTION

1. Plaintiffs are North Carolina business owners whose liberties are protected by both the North Carolina and United States Constitution. Plaintiffs' fundamental rights have been denied through the arbitrary application of Executive Orders issued under a declared State of Emergency by the State, purportedly to prevent the spread of COVID-19.

2. Plaintiffs' primary business use is to provide entertainment to their patrons or members in the form of dance performances (both "adult oriented" and non-adult oriented"), and the presentation of live and recorded music presented by singers, bands, and/or disc jockey's ("DJ's"), in conjunction with providing alcohol for responsible consumption, as well as providing food and other accessory uses.

3. The Governor has vast authority to issue Executive Orders when confronting a health crisis, however such powers do not obviate state officials' duty to safeguard civil liberties.

4. Any state action that infringes upon civil liberties must closely target the root of the purported crisis theoretically requiring state restrictions on fundamental rights.

5. The stated goal of preventing the spread of COVID-19 by restricting the risk of contracting and transmitting COVID-19 in: (1) settings that are indoors, where air does not

circulate freely and where people are less likely to maintain social distancing by staying six (6) feet apart; (2) where people are stationary and in close contact for long periods of time; and (3) gatherings of larger groups of people because such gatherings offer more opportunity for person-to-person contact with someone infected with COVID-19.

6. Plaintiffs bring this action challenging the Constitutionality of the Governor's Executive Orders on the basis that the Executive Orders challenged herein have deprived them of numerous rights and liberties under both the United States and North Carolina Constitutions.

7. Plaintiffs are and will continue to be threatened with criminal and civil penalties, as well as suffer a denial of due process and their civil rights on the basis of the enforcement of the challenged Executive Orders, the perceived violation of which could result in their arrest, forced closure of their businesses, and/or loss of State entitlements if they exercise their protected liberties similar to restaurants, commercial wineries, breweries, and distilleries, or the many other "service" and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141.

8. Plaintiffs seek: (1) equitable injunctive relief to enjoin the enforcement of the Executive Orders, (2) declaratory relief from this Court in declaring that the Governor's Executive Orders violate Plaintiff's civil rights under: (a) 42 U.S.C. Section 1983 of the Federal Civil Rights Act ("Section 1983"), (b) Due Process and (c) Equal Protection Clauses of the 5th and 14th Amendments, (d) the First Amendment, and (d) Sections 1, 2, 14, 18, and 19 of the Declaration of Rights of the Constitution of the State of North Carolina, (3) attorney's fees and costs for the reasonable and necessary legal services provided by Plaintiffs' counsel, where allowed by law; and (4) for such other and further relief as the Court deems just and appropriate.

II. JURISDICTION AND VENUE

9. This is an action for declaratory and injunctive relief. This is an action challenging the constitutionality of the Executive Orders described below, which adversely affect each individual Plaintiffs' civil liberties and constitutional rights.

10. This action arises under 42 U.S.C. § 1983 in relation to the Governor's deprivation of Plaintiffs' constitutional rights to free speech, due process and equal protection rights under the First, Fifth, and Fourteenth Amendments to the U.S. Constitution. Accordingly, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has authority to award the requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys' fees and costs under 42 U.S.C. § 1988.

11. Additionally, the jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Secs. 1983, 1985, and 1988. This is a cause of action also arising under Article I, Section 10 of the Constitution of the United States, and under the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States.

12. Additionally, the jurisdiction of this Court is also invoked pursuant to this Court's Supplemental Jurisdiction under 28 U.S.C. § 1367, and, through that, under Sections 1, 2, 14, 18, and 19 of the Declaration of Rights of the Constitution of the State of North Carolina.

13. The Eastern District of North Carolina is an appropriate venue for this action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because the State maintains offices and engages in substantial official government work and also enforces the Executive Orders at issue herein with the jurisdiction of the Eastern District, and it is the District in which a substantial amount of the events giving rise to the claims occurred, which occurrences are state-wide under the Governor's Executive Orders complained of.

III. PARTIES

14. Talleywhacker, Inc. d/b/a Arizona Pete's Country Music Saloon is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

15. Asheville Golf & Travel, Inc. d/b/a The Treasure Club Asheville is a corporation organized and existing under the laws of the State of North Carolina, with an office and place of business in Guilford County, North Carolina.

16. BLL Enterprises, Inc. d/b/a Leather & Lace South, is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

17. B & S Enterprises, Inc. d/b/a Tassels is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

18. DBD#1, Inc. d/b/a Crazy Horse Charlotte is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

19. DBLL, Inc. d/b/a Leather and Lace Gastonia is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

20. DDDD, Inc. d/b/a Gold Club is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

21. Edison's Lounge LLC d/b/a Edison's Lounge Gentlemen's Club is a limited liability company is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Onslow County, North Carolina.

22. Gist and Hendrix, LLC d/b/a Secrets Cabaret is a limited liability company is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

23. Jacksonville Golf and Travel LLC d/b/a Platinum Gentlemen's Club is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Duplin County, North Carolina.

24. JMB Golf & Travel, Inc. d/b/a The Treasure Club Greensboro is a corporation organized and existing under the laws of the State of North Carolina, with an office and place of business in Guilford County, North Carolina.

25. Leather and Lace, Inc. d/b/a Leather & Lace University is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

26. Long View Golf & Travel, Inc. d/b/a The Treasure Club is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

27. Mistylou Investments, LLC d/b/a Tobies Gentlemen's Lounge is a limited liability company is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Onslow County, North Carolina.

28. National Golf Distributors, LLC d/b/a Mirage Exotic Nightlife is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

29. Onslow Golf and Travel LLC d/b/a Stiletto Gentlemen's Club is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Onslow County, North Carolina.

30. RDU Golf & Travel, LLC d/b/a Pure Gold is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

31. RPS Holdings, LLC d/b/a Capital Cabaret/747 Chophouse is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Wake County, North Carolina.

32. Southern Pines Golf Distributors, LLC d/b/a Cheetah is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

33. TD Operations, LLC d/b/a Limelight is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

34. TMC Restaurant of Charlotte, LLC d/b/a The Men's Club of Charlotte is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

35. Top Shelf Entertainment, LLC d/b/a Club Onyx is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Gaston County, North Carolina.

36. Triad Golf & Travel, Inc. d/b/a Centerfolds is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

37. TWDDD, Inc. d/b/a Scores is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

38. Wilmington Golf Distributors, LLC d/b/a Cheetah is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

39. 3 MB Hospitality, LLC d/b/a Savannah's Gentlemen's Club is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Guilford County, North Carolina.

40. 200 W. Woodlawn Road, Inc. d/b/a Gentlemen's Club is a corporation organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Mecklenburg County, North Carolina.

41. 511 Cotanche St. Entertainment, LLC d/b/a Still Life is a limited liability company organized and existing under the laws of the State of North Carolina, with its office and principal place of business in Pitt County, North Carolina.

42. At all times material hereto, Roy A. Cooper, III, is the duly elected Governor of the State of North Carolina and is a constitutional political officer and elected official of the State of

North Carolina. By naming Governor Roy Cooper in his Official Capacity as Governor of the State of North Carolina, this capacity includes all North Carolina employees of the executive branch, and all State Agencies and their agents and employees, and all agents, employees and all local officials and agencies charged with the responsibility to inspect and/or enforce the Executive Orders challenged herein. The Defendant will be referred to as the “Governor.”

IV. GENERAL ALLEGATIONS

A. The Executive Orders At Issue Herein

43. On March 14, 2020, the Governor issued Executive Order No. 117, limiting mass gatherings, defined as events bringing together more than 100 persons, in North Carolina and closing public schools to limit the spread of COVID-19. A copy of Executive Order No. 117 is attached hereto and incorporated herein as Exhibit A.

44. On March 17, 2020, the Governor issued Executive Order No. 118, which, in pertinent part, limited the sale of food and beverages, to carry-out, drive-through and delivery only, effectively closing all bars, which did not fit into the definition of a restaurant, in North Carolina. A copy of Executive Order No. 118 is attached hereto and incorporated herein as Exhibit B.

45. Section 1, of Executive Order No. 118, which limited the sale of food and beverages, to carry-out, drive-through and delivery only, went into effect as of 5:00 p.m. on March 17, 2020.

46. Section 1 of Executive Order No. 118 did not receive the necessary concurrence from the Council of State consistent with the Governor’s emergency powers authority in N.C. Gen. Stat. § 166A-19.30(b).

47. As basis for this order, the Governor asserted that action was needed to “protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 outbreak, protect our most vulnerable citizens, and avoid strain on our health care system.”

48. Whereas Executive Order No. 117, signed by the Governor on March 14, 2020 specifically excluded “restaurants” and “other retail establishments” from its definition of mass gatherings, Executive Order No. 118 revised the language to remove “restaurants” and “other retail establishments.” It did however leave “airports, bus and train stations, medical facilities, libraries, shopping malls and centers,” as well as “office environments, factories, grocery stores and child care centers” among the locations excluded from the exemption on mass gatherings.

49. Executive Order No. 120, signed by the Governor on March 23, 2020, amended Executive Order No. 117, thereby providing additional limitations on mass gatherings. Among the amendments were the orders for “entertainment facilities without a retail or dining component” to close at 5:00 p.m. on March 25, 2020, and for personal care and grooming businesses, “where individuals are in close proximity for extended periods of time” or where service personnel were in direct contact with clients to also close. This included barber shops, beauty salons, hair salons, nail salons, massage parlors and tattoo parlors, among others. A copy of Executive Order No. 120 is attached hereto and incorporated herein as Exhibit C.

50. On March 27, 2020, the Governor signed Executive Order No. 121, which ordered individuals in the State of North Carolina to stay at home, except for as otherwise permitted in the EO. A copy of Executive Order No. 121 is attached hereto and incorporated herein as Exhibit D.

51. Contained within Executive Order No. 121 were numerous exceptions to the stay at home order, including 9 broadly-defined Essential Activities and 30 also broad categories of “Essential Businesses and Operations.”

52. As basis for Executive Order No. 121, the Governor asserted that action was needed “to mitigate community spread of COVID-19” and to “limit unnecessary person-to-person contact in workplaces and communities.” Further the Governor stated that “the limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19.”

53. On April 23, 2020, the Governor issued Executive Order No. 135, which extended the Stay at Home Order through May 8, 2020, and he also unveiled a three phased plan to re-open North Carolina. A copy of Executive Order No. 135 is attached hereto and incorporated herein as Exhibit E.

54. On the same day, during a press conference at which the Governor and Secretary of the North Carolina Department of Health and Human Services explained the three phases and the plans to lift the COVID-19-related restrictions, a slide presentation was used to describe the various phases as well as the metrics which would purportedly guide the decisions to move to each phase. Contained within the slide describing Phase 2, it stated that Phase 2 would “[a]llow limited opening of restaurants, bars and other businesses that can follow strict safety protocols.” A copy of the information slides is attached hereto and incorporated herein as Exhibit F.

55. On May 5, 2020, the Governor signed Executive Order No. 138, moving North Carolina into Phase 1 of the Three-Phase plan to re-open North Carolina. A copy of Executive Order No. 138 is attached hereto and incorporated herein as Exhibit G.

56. Through Executive Order No. 138, certain retail businesses were permitted to re-open, with certain requirements, however, Section 4 of the EO maintained restrictions on Restaurants and Bars which effectively kept bars closed. Specifically, Section 4.B.1. directed that “Bars are directed not to serve alcoholic beverages for onsite consumption.”

57. As basis for Executive Order No. 138, and the start of the re-opening of North Carolina, the Governor asserted that “since the issuance of executive orders to slow the spread of COVID-19, North Carolina has ‘flattened the curve’ and prevented a surge or spike in cases around the state.”

58. Uniquely, Executive Order No. 138, unlike any previous Executive Order, contains a provision that purports to preclude any challenge for the restrictions contained therein. Section 10, “No Private Right of Action,” states:

Section 10. No Private Right of Action

This Executive Order is not intended to create, and does not create, any individual right, privilege or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. Sec. 166A-19.60) or any other person.

59. On May 20, 2020, Executive Order No. 141 was signed by the Governor, moving North Carolina into Phase 2 of the Three-Phase plan to re-open North Carolina. A copy of Executive Order No. 141 is attached hereto and incorporated herein as Exhibit H.

60. Pursuant to Executive Order No. 141, certain types of businesses were permitted to re-open effective May 22, 2020 at 5:00 p.m., with certain restrictions, including restaurants, personal care, grooming and tattoo businesses.

61. Executive Order No. 141 also specifically prevented entertainment and fitness facilities, including bars, night clubs, dance halls and music halls, from opening.

62. The purported bases provided for the continuation of certain restrictions included in Executive Order No. 141, were, among other things:

- a) that “the risk of contracting and transmitting COVID-19 is higher in settings that are indoors, where air does not circulate freely and where people are less

likely to maintain social distancing. . . [and] where people are stationary and in close contact for long periods of time;”

- b) “because of the nature of the activity, the way that people have traditionally acted and interacted with each other in that space, and the duration that patrons stay in the establishment;” and
- c) that those businesses “by their very nature, present greater risk of the spread of COVID-19” due to factors including “people traditionally interacting in that space in a way that would spread COVID-19 . . . or a business model that involves customers or attendees remaining in a confined indoor space over a sustained period.”

63. Executive Order No. 141, which permitted Personal Care, Grooming and Tattoo Businesses to open, noted, in the very definition of those businesses that such workers “directly touch customers.”

64. Executive Order No. 141, in describing the requirements for restaurants to begin operating, also provided the following clarifications: “People sitting at a table need not be members of the same household and do not need to stay six (6) feet apart. Moreover, this Executive Order does not require servers and wait staff to stay six (6) feet away from customers.”

65. Executive Order No. 141 also contains a provision for exemptions from “This Executive Order.” Section 4 states:

Section 4. Exemptions form This Executive Order
Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, ***and other activities constituting the exercise of First Amendment rights*** are exempt from all of the requirements of this Executive Order and Executive Order Nos. 121 and 138, notwithstanding any other provision of this Executive Order or of Executive Order Nos. 121 and 138. Exhibit H, Emphasis added.

66. Again, Executive Order No. 141, like 138, contains a provision that purports to preclude any challenge for the restrictions contained therein. Section 10, “No Private Right of Action,” states:

Section 12. No Private Right of Action

This Executive Order is not intended to create, and does not create, any individual right, privilege or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. Sec. 166A-19.60) or any other person.

67. Executive Order No. 141 provides no time limitations during which customers may remain at any of the businesses opened by the EO.

68. At some time prior to the issuance of Executive Order No. 141, the North Carolina Department of Health and Human Services released a document entitled *Interim Guidance for Restaurants*, although it was dated May 22, 2020. A copy of that document is attached hereto incorporated herein as Exhibit I.

69. Among the recommendations, but not requirements contained within the *Interim Guidance for Restaurants*, was that employees and customers wear a cloth or disposable face covering.

70. On May 22, 2020, the Governor’s Office published “Guidance on Section 8(A) of Executive Order No. 141,” which states:

Section 8(A) of Executive Order No. 141 orders that entertainment and fitness facilities, including but not limited to Bars, must remain closed. “Bars” is defined in Section 1 of the Executive Order as follows: [E]stablishments that are not eating establishments or restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) and 18B-1000(6) ... and that are principally engaged in the business of selling alcoholic beverages for onsite consumption. Some restaurants call themselves “breweries” or “bars;” some breweries call themselves “restaurants” or “bars;” and some bars call themselves “restaurants” or “breweries.” As a result, we have received questions

about how to interpret whether an establishment is within the Executive Order's definition of "bar" and must remain closed.

71. This latest May 22, 2020, "Guidance" document, a copy of which is attached hereto incorporated herein as Exhibit J, further states:

An establishment shall not be considered to be "principally engaged in the business of selling alcoholic beverages for onsite consumption" — and it may be open under Executive Order No. 141 — if it meets the following test: • It produces alcoholic beverages for commercial sale off-premises and is, therefore, permitted by the ABC Commission under N.C. Gen. Stat. §§ 18B-1101 to 18B-1105. The import of this Guidance is that eating establishments and restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) & (6) and breweries, wineries, and distilleries permitted under N.C. Gen. Stat. § 18B-1100 *et. seq.* are allowed to open under Section 8(A) of Executive Order 141.

NOTE: If any customers consume food and/or beverages on-premises at the commercial winery, brewery, or distillery, the Emergency Maximum Occupancy requirements, Core Screening, Signage, and Sanitation requirements, and other regulations for restaurants under Section 6(C)(2) of Executive Order No. 141 apply. Therefore, any customers consuming food or beverages on-premises must be in seated groups that are spaced at least six feet apart, and customers or guests will be limited to 50% fire capacity.

72. As of May 22, 2020, the businesses allowed to reopen under the "Phase 2" schedule summarized from the Executive Orders above are:

- Restaurants (open for service with limits under Section 6(C)(2) of Executive Order No. 141)
- Commercial winery (open for service with limits under Section 6(C)(2) of Executive Order No. 141)
- Brewery (open for service with limits under Section 6(C)(2) of Executive Order No. 141)
- Distillery (open for service with limits under Section 6(C)(2) of Executive Order No. 141)
- Beauty/Hair salons
- Barbershops
- Nail salons
- Manicure or pedicure providers
- Waxing and hair removal centers
- Tanning salons
- Tattoo parlors
- Massage therapists

- Child care centers
- Indoor and outdoor pools

73. The operational requirements of Section 6(C)(2) of Executive Order No. 141 are as

follows:

C. Restaurants.

1. Restaurants May Open for On-Premises Service. During the effective period of this Executive Order, restaurants may allow on-premises consumption of food and beverages. Restaurants must meet the sanitation requirements of this Section even if they are open only for take-out or delivery service.

2. Requirements. While this Executive Order is in effect, all open restaurants must do all of the following:

a. Limit customers in indoor and outdoor seating areas to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a restaurant is the lowest number produced by applying the following three tests:

i. Limit the number of customers in the restaurant to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) customers for every one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to customers or guests).

ii. Limit the number of people in the space so that groups can stay six (6) feet apart.

iii. Arrange the restaurant so that customers sitting at a table are not within six (6) feet of any customers sitting at another table. Moreover, each group of customers sitting at a counter should be separated from other groups by six (6) feet.

b. Limit customers at tables so that no more than ten (10) people shall be seated together at the same table. However, more than ten (10) people may sit together at the same table if they are members of the same household.

c. Workers in Restaurants are strongly encouraged to wear Face Coverings when they are within six (6) feet of another person. Notwithstanding this general rule, people whose religious beliefs prevent them from wearing a Face Covering, people who cannot wear a Face Covering due to a medical or behavioral health condition, and people who are under twelve (12) years of age are excepted from the

requirement to wear a Face Covering. Children under two (2) years of age shall not wear a Face Covering so that their breathing may not be inhibited.

d. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order, along with the following additional requirements:

i. Increase disinfection during peak times or high customer density times, and disinfect all shared objects (e.g., dining tables, booths, counters, payment terminals, tables, countertops/bars, receipt trays, condiment holders, and reusable menus) between each use.

ii. Promote frequent use of hand-washing and hand sanitizer for wait staff and food service staff throughout the shift and upon reporting to work. Hand washing must at least meet the requirements specified in the North Carolina Food Code Manual.

e. Mark six (6) feet of spacing in lines at high-traffic areas for customers, such as a cash register or place where customers wait to be seated at their table.

74. The Governor, through the Executive Orders described above, has continued the forced closure of Plaintiffs' businesses while allowing similar public accommodations to provide services to the public, such as restaurants, commercial wineries, breweries, and distilleries, predicated on the procedures set forth in Section 6(C)(2) of Executive Order No. 141.

75. All Plaintiffs are ready, willing, and able to open and operate their respective businesses in compliance with the Section 6(C)(2) of Executive Order No. 141.

76. From the perspective of imposing restrictions to prevent the spread of COVID-19, the Governor has allowed restaurants, commercial wineries, breweries, and distilleries to operate as "allowed" or "essential," while prohibiting Plaintiffs from operating under IDENTICAL operational safety protocols, and making any effort to so operate a "criminal" act.

77. The restrictions imposed by the Executive Orders challenged herein are causing irreparable harm to the Plaintiffs and others similarly situated throughout the State of North Carolina because of the threatened enforcement of Executive Order Nos. 118, 120, 135, 138, and 141 (hereinafter the "challenged Executive Orders").

78. In adopting and threatening to enforce these challenged Executive Orders, the Governor has violated the Plaintiffs' First Amendment Rights, Due Process rights, and Equal Protection rights as protected by the 1st, 5th and 14th Amendments of the United States Constitution as well as Sections 1, 2, 14, 18, and 19 of the Declaration of Rights of the Constitution of the State of North Carolina.

79. Relief is sought on the basis of the likelihood of success as set forth in the arguments below.

B. Plaintiffs' Statement Of Jurisdictional Allegations Establishing Standing, Ripeness And A Right To Relief

80. Plaintiffs have engaged in the acquisition and operation of their respective businesses in order to provide entertainment to their patrons or members in the form of dance performances (both "adult oriented" and non-adult oriented"), and the presentation of live and recorded music presented by singers, bands, and/or disc jockey's ("DJ's"). All such entertainment is protected by the First Amendment to the United States Constitution and Sec. 14 of the Declaration of Rights of the North Carolina State Constitution.

81. In addition to the presentation of the entertainment described above, Plaintiffs also provide alcoholic beverages for responsible consumption to their patrons or members. Plaintiffs also provide food services and other accessory uses for the benefit of their patrons or members.

82. In the wake of the challenged Executive Orders, Plaintiffs have been forced to shut down and discontinue the operation of their businesses, resulting not only in financial losses, but the complete and permanent loss of the subject businesses, as well as a loss of the goodwill and other non-monetary benefits derived from operating their subject businesses.

83. The financial and non-financial losses the Plaintiffs have suffered is the direct result of the discriminatory, irrational, and unequal restrictions from the Governor's overreaching adoption and enforcement of the challenged Executive Orders.

84. Plaintiffs have and will continue to suffer the harms of loss of their First Amendment rights, property rights, their business goodwill, and other freedoms as set forth above due to the actions of the Governor and the adoption and enforcement of the challenged Executive Orders.

85. Plaintiffs are and will continued to be threatened with criminal and civil penalties, as well as suffer a denial of due process and their civil rights on the basis of the enforcement of the challenged Executive Orders, the perceived violation of which could result in their arrest, forced closure of their businesses, and/or loss of State entitlements if they exercise their protected liberties similar to restaurants, commercial wineries, breweries, and distilleries, or the many other "service" and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141.

86. There is a clear, present, actual, substantial and bona fide justifiable controversy between the parties.

87. Plaintiffs are in need a declaratory judgment to establish that their First Amendment protected businesses are entitled to be exempt under Executive Order No. 141, which states, "Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, *and other activities constituting the exercise of First Amendment rights* are exempt from all of the requirements of this Executive Order and Executive Order Nos. 121 and 138, notwithstanding any other provision of this Executive Order or of Executive Order Nos. 121 and 138." Exhibit H, emphasis added.

88. Plaintiffs are in need a declaratory judgment to establish that the provisions in Sections 10 and 12, contained in Executive Order Nos. 138 and 141, respectively, which purport to impose “No Private Right of Action,” manifest a denial of access the courts as guaranteed by the Sec. 18 of the Declaration of Rights of the North Carolina State Constitution: “Court shall be open. All courts shall be open: every person for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without favor, denial, or delay.”

89. Plaintiffs have no adequate remedy at law. No amount of money damages could adequately compensate the Plaintiffs for the irreparable harm described herein, specifically the deprivation of constitutionally protected fundamental rights.

90. Plaintiffs and the public at large will suffer irreparable injury if injunctive relief is not granted, and if the Governor is permitted to enforce the operative provisions of the challenged Executive Orders.

91. The public interest would best be served by the granting of injunctive relief, and, indeed, the public interest is disserved by permitting the enforcement of the operative provisions of the challenged Executive Orders that are unconstitutional and violate fundamental rights.

92. All conditions precedent to the institution and maintenance of this cause of action have occurred or have been performed.

93. As a direct and proximate result of the challenged Executive Orders, Plaintiffs have suffered actual, consequential, and special damages, in addition to the irreparable harm described herein.

94. The acts, practices and jurisdiction of the Governor’s office and the State of North Carolina, as set forth herein, were and are being performed under color of state law and therefore

constitute state action within the meaning of that doctrine. In this situation, the acts of the State Governor are state actions, *Cooper v. Aaron*, 358 U.S. 1, 16–17 (1958); *Sterling v. Constantin*, 287 U.S. 378, 393 (1932).

95. Plaintiffs have engaged the undersigned to prosecute this action and vindicate their rights under the law and Plaintiffs would request an award of attorneys’ fees pursuant to 42 U.S.C. § 1988, and any other lawful basis.

COUNT 1
VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE FOURTEENTH AMENDMENT

96. Plaintiffs incorporate by reference paragraphs 1-95 as if fully set forth herein.

97. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, the Governor has deprived Plaintiffs of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

98. As set forth in this Complaint, the applicable provisions of the challenged Executive Orders deprive Plaintiffs of their fundamental rights and freedoms by forcing the continued closure of their businesses, yet providing exceptions for other activity and conduct that is similar, if not identical, in its impact and effects as related to the prevention of the spread of COVID-19.

99. The challenged measures lack any rational basis, are arbitrary, capricious, and vague, and are a palpable invasion of rights secured by fundamental law in violation of the Equal Protection Clause.

100. When the government treats an individual disparately as compared to similarly situated persons, and that disparate treatment burdens a fundamental right, targets a suspect class,

or has no rational basis, such treatment violates the equal protection guarantees of the Fourteenth Amendment.

101. At its core, the Equal Protection Clause of the 14th Amendment to the U.S. Constitution functions as a constitutional guarantee that no person or group will be denied the protection under the law that is enjoyed by similar persons or groups.

102. In other words, persons similarly situated must be similarly treated. Equal protection is extended when the rules of law are applied equally in all like cases and when persons are exempt from obligations greater than those imposed upon others in like circumstances.

103. In this action, Plaintiffs are facing civil and/or criminal sanctions if they exercise their protected liberties and open and operate similar to restaurants, commercial wineries, breweries, and distilleries, or the many other “service” and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141.

104. For that reason, Plaintiffs submit that there is no difference between their businesses and those that the Governor has exempted from the operational restrictions described above, as it relates to the possible spread of COVID-19.

105. Strict scrutiny under the Equal Protection Clause applies where, as here, there is an unequal classification amongst Plaintiffs and the ability to open and operate similar to restaurants, commercial wineries, breweries, and distilleries, or the many other “service” versus other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141.

106. The Governor cannot satisfy strict scrutiny, because the arbitrary classifications described above are not narrowly tailored measures that further any compelling government interests, for the reasons stated above.

107. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless the Governor is enjoined from further implementation and enforcement of the Orders promulgated under the unilateral authority of the Governor in enacting an Order which provides no logical differentiation between those businesses allowed to operate and Plaintiffs' businesses.

108. Plaintiffs are entitled to declaratory relief, a temporary restraining order and preliminary and permanent injunctive relief invalidating and restraining enforcement of the operative provisions of the challenged Executive Orders precluding Plaintiffs from opening and operating their businesses while allowing other similarly situated businesses to operate.

COUNT II
VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT TO
THE U.S. CONSTITUTION APPLICABLE THROUGH THE 14TH AMENDMENT

109. Plaintiff incorporates by reference paragraphs 1-95 as if fully set forth herein.

110. Plaintiffs have engaged in the acquisition and operation of their respective businesses in order to provide entertainment to their patrons or members in the form of dance performances (both "adult oriented" and non-adult oriented"), and the presentation of live and recorded music presented by singers, bands, and/or disc jockey's ("DJ's"). All such entertainment is protected by the First Amendment to the United States Constitution.

111. Plaintiffs fear that any effort to open and operate their businesses under the exemption granted under Executive Order No. 141, which states, "Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, *and other activities constituting the exercise of First Amendment rights* are exempt from all of the requirements of this Executive Order..." may well be rejected by any or all enforcement efforts undertaken for any purported violation of the challenged Executive Orders.

112. Said enforcement efforts would inherently require a determination whether Plaintiffs' specific First Amendment rights should enjoy the same exemptions as "Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies," and would be protected as "*other activities constituting the exercise of First Amendment rights.*"

113. Invariably, any such interpretation would require an analysis of the "content" of the "speech" being evaluated and would thus be "content based."

114. Any regulation predicated on the content of the speaker's speech is presumptively unconstitutional. *Reed v. Town of Gilbert*, 135 S. Ct. 2218 at 2226 (2015).

115. A regulation is content-based if it requires enforcement authorities to examine the content of the message that is conveyed to determine whether a business is subject to the First Amendment exemptions of Executive Order No. 141.

116. When a governmental regulation is based on the content of the speaker's speech, it is of no constitutional significance whether the regulation is a complete prohibition or a limitation. The regulation is still presumptively unconstitutional and subject to strict scrutiny.

117. Any effort to decline Plaintiffs' ability to operate under the First Amendment exemptions of Executive Order No. 141 would constitute a content-based determination, because there would have to be some type of "weighted" comparison between Plaintiffs' First Amendment activities and "Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, and *other activities constituting the exercise of First Amendment rights.*"

118. To deny the exemption, the government would have to conclude that Plaintiffs' First Amendment rights are of some lesser or diminished level of protection.

119. The Governor does not have a compelling interest to prohibit Plaintiffs' otherwise exempt businesses since there is no *legitimate interest at all* in denying otherwise applicable First

Amendment protections to Plaintiffs, since they have agreed to open and operate like the other non-First Amendment protected businesses, like restaurants, commercial wineries, breweries, and distilleries, or the many other “service” and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141, and, as a matter of law and science, the operational procedures set forth in Section 6(C)(2) of Executive Order No. 141 would make the Plaintiffs less likely to spread contagion than “Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies” not subject to these “social distancing” and operational safety procedures.

120. The Executive Orders challenged herein are not neutral laws of general applicability because they significantly burden and ultimately prohibit the Plaintiffs’ right to target constitutionally protected activity, all the while providing broad exemptions for many other gatherings of more than 10 people that are not constitutionally protected.

121. Accordingly, the restrictions and forced closure of Plaintiffs’ businesses found in the challenged Executive Order comprise an unconstitutional content-based speech prohibition.

COUNT III
THE CHALLENGED EXECUTIVE ORDERS VIOLATE PLAINTIFFS’ DUE
PROCESS RIGHTS AND COMPRISE A TEMPORARY TAKING IN
VIOLATION OF THE FIFTH AND 14TH AMENDMENTS

122. Plaintiffs incorporate herein by reference paragraphs 1-95 as if fully set forth herein.

123. By reason of the aforementioned acts, policies, practices, procedures, and/or customs, created, adopted, and enforced under color of State law, the Governor has deprived Plaintiffs of their right to due process in violation of the Fifth and Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

124. The Governor's actions, as set forth in this Complaint, have deprived Plaintiffs of the use and enjoyment of their property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

125. Plaintiffs have a fundamental property interest in conducting lawful business activities that are protected by the Due Process Clause of the Fifth and Fourteenth Amendments. At no point is the Governor granted with such authority under the Emergency Powers granted by him and the Governor does not have the authority to take away the property rights and liberties of property ownership and use of Plaintiffs' businesses without any "notice or opportunity to be heard."

126. Under the Due Process Clause of the Fifth and Fourteenth Amendments, no State shall "deprive any person of life, liberty, or property, without due process of law." The fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights.

127. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless the Governor is enjoined from the continuous implementation and enforcement of the operative provisions of the challenged Executive Orders.

128. Plaintiffs have a fundamental and protected interest in the use and enjoyment of their business properties.

129. The Governor, acting under color of state law, has restricted the use of Plaintiffs' properties, as described herein, and has, at least temporarily, taken Plaintiffs' protected property interest in their business properties.

130. The Governor, through the enforcement of the Executive Orders at issue herein, has deprived Plaintiffs of all use of their business properties.

131. Said taking has unreasonably interfered with Plaintiffs' reasonable investment backed expectations.

132. The Supreme Court has interpreted the Fifth Amendment's Due Process Clause as providing two main protections: procedural due process, which requires government officials to follow fair procedures before depriving a person of life, liberty, or property, and substantive due process, which protects certain fundamental rights from governmental interference.

133. Based on the facts described herein, the challenged Executive Orders did not and do not provide any "fair procedures" as a predicate to continue the forced closure of Plaintiffs' businesses, thus the Executive Orders provide neither procedural nor substantive due process.

134. Plaintiffs have been damaged by the Governor's taking of their properties for which they have received no "just compensation."

COUNT IV
SUPPLEMENTAL JURISDICTION CLAIMS UNDER U.S.C. § 1367
VIOLATIONS OF THE NORTH CAROLINA STATE CONSTITUTION

135. Plaintiffs incorporate herein by reference paragraphs 1-95 as if fully set forth herein.

136. Article I of the North Carolina State Constitution contains the State's Declaration of Rights.

137. Section 1 of the Declaration of Rights ensures the equality and rights of the citizens of North Carolina: We hold it to be self-evident that all persons are created equal, that they are endowed by their Creator with certain inalienable rights, that among them are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

138. Sec. 2, Sovereignty of the people, states: All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

139. Sec. 14, Freedom of speech and press, states: Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

140. Executive Order No. 141 contains a provision for exemptions from “This Executive Order.” Section 4 states:

Section 4. Exemptions form This Executive Order
Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, ***and other activities constituting the exercise of First Amendment rights*** are exempt from all of the requirements of this Executive Order and Executive Order Nos. 121 and 138, notwithstanding any other provision of this Executive Order or of Executive Order Nos. 121 and 138.
Exhibit H, Emphasis added.

141. The preclusion of Plaintiffs’ ability to operate their businesses imposed by the Executive Orders challenged herein operate as a violation of Sec. 14, because to deny the exemption, the government would have to conclude that Plaintiffs’ Sec. 14 rights are of some lesser or diminished level of protection.

142. The Governor does not have a compelling interest to prohibit Plaintiffs’ otherwise exempt businesses since there is no *legitimate interest at all* in denying otherwise applicable Sec. 14 protections to Plaintiffs, since they have agreed to open and operate like the other businesses, like restaurants, commercial wineries, breweries, and distilleries, or the many other “service” and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141. Further, as a matter of law and science, the operational procedures set forth in Section 6(C)(2) of Executive Order No. 141 would make the Plaintiffs less likely to spread contagion than

“Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies” not subject to these “social distancing” and operational safety procedures.

143. The Executive Orders challenged herein are not neutral laws of general applicability because they significantly burden and ultimately prohibit the Plaintiffs’ right to target constitutionally protected activity, all the while providing broad exemptions for many other gatherings of more than 10 people that are not constitutionally protected.

144. Accordingly, the restrictions and forced closure of Plaintiffs’ businesses found in the challenged Executive Order comprise an unconstitutional content-based speech prohibition.

145. Sec. 18, Court shall be open, states: All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

146. Executive Order Nos. 138 and 141 violate Sec. 18 of the Declaration of Rights because they contain a provision that purports to preclude any challenge for the restrictions contained therein. Section 10 in EO 138 and Section 12 in EO 141, “No Private Right of Action,” state:

No Private Right of Action

This Executive Order is not intended to create, and does not create, any individual right, privilege or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. Sec. 166A-19.60) or any other person.

147. Sec. 19, Law of the land; equal protection of the laws, states: No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall

be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

148. The Governor, through the Executive Orders described above, has violated Sec. 19 through the continued forced closure of Plaintiffs' businesses while allowing similar public accommodations to provide services to the public, like restaurants, commercial wineries, breweries, and distilleries, or the many other "service" and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141.

149. All of the violations of the North Carolina Declaration of Rights described above are committed under color of state law and are the direct and proximate cause of Plaintiffs' irreparable harm and damages, as described herein.

150. Plaintiffs have no adequate remedy at law. No amount of money damages could adequately compensate the Plaintiffs for the irreparable harm described herein, specifically the deprivation of constitutionally protected fundamental rights such as those protected by the North Carolina Declaration of Rights described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court GRANT the following relief:

1. Declare the provisions of Executive Order Nos. 117, 118, 120, 121, 135, 138, and 141, that forced the closure of Plaintiffs' businesses, and those provisions of Executive Order No. 141 that prevent Plaintiffs from being allowed to open and operate the same as restaurants, commercial wineries, breweries, and distilleries, or the many other "service" and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141 to be violative of the

aforementioned United States and North Carolina Constitutional and statutory provisions.

2. Entertain *emergency* proceedings for the issuance of a Temporary Restraining Order restraining and preventing any governmental entity or law enforcement officer from applying and enforcing the provisions of Executive Order Nos. 117, 118, 120, 121, 135, 138, and 141, that forced the closure of Plaintiffs' businesses, and those provisions of Executive Order No. 141 that prevent Plaintiffs from being allowed to open and operate the same as restaurants, commercial wineries, breweries, and distilleries, or the many other "service" and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order 141 **and** find that Plaintiffs are entitled to the exemptions granted *other activities constituting the exercise of First Amendment rights*, and finding that Plaintiffs are exempt from all of the requirements of Executive Order 141 and Executive Order Nos. 121 and 138, notwithstanding any other provision of Executive Order 141 or of Executive Order Nos. 121 and 138,
3. Entertain proceedings for the issuance of a Permanent Injunction restraining and preventing any governmental entity or law enforcement officer from applying and enforcing the provisions of Executive Order Nos. 117, 118, 120, 121, 135, 138, and 141, that forced the closure of Plaintiffs' businesses, and those provisions of Executive Order No. 141 that prevents Plaintiffs from being allowed to open and operate the same as restaurants, commercial wineries, breweries, and distilleries, or the many other "service" and other businesses allowed to open and operate under the Phase 2 provisions of Executive Order No. 141 **and** find that Plaintiffs are

entitled to the exemptions granted *other activities constituting the exercise of First Amendment rights*, and finding that Plaintiffs are exempt from all of the requirements of Executive Order 141 and Executive Order Nos. 121 and 138, notwithstanding any other provision of Executive Order 141 or of Executive Order Nos. 121 and 138.

4. Award Plaintiffs any and all attorney's fees and costs as authorized by law;
5. Award Plaintiffs any and all actual, consequential, and special damages to which Plaintiffs are entitled.
6. Award Plaintiffs such other and further relief as this Court deems fit, just, and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs would demand a jury trial on all issues so triable.

This the 26th day of May, 2020.

Respectfully submitted,

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SUBJECT TO ADMISSION PURSUANT TO LR
83.1

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