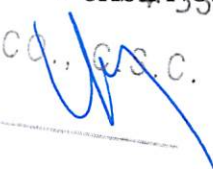


STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
2020 JUN -4 CASE NO.:

WAKE CO., N.C.  
BY 

NORTH CAROLINA BAR AND TAVERN  
ASSOCIATION; CAPITAL CITY  
CENTER, INC. d/b/a Work; DANIEL  
LOVENHEIM; NOIR HOLDINGS LLC  
d/b/a Milk Bar, MATTHEW KENNER; 603  
GLENWOOD, INC d/b/a Cornerstone  
Tavern; PLUS DUELING PIANOS, INC.  
d/b/a PLUS Dueling Piano Bar; TONY  
BASFORD; NICOLE LUKENS; PETER  
RIVERA; TIMOTHY NORTON; TIFFANY  
HOWELL; TRH, INC. d/b/a Tee Time  
Sports & Spirits, CHESTER'S, INC. d/b/a  
Burke St Pub; JOHNNY MARTIN;  
iNETWORK LLC d/b/a The Scorpio;  
JASON HOWARD; HYBRID  
HOSPITALITY GROUP, LLC d/b/a The  
Atlantic Lounge; ALAN R. SNEAD;  
CHARLIE BROWN TAVERN LLC d/b/a  
Charlie Browns Tavern; HOLLY  
WHITLEY; GYPSY WOMEN LLC d/b/a  
Legends Pub; JASON RUTH; BIG BOYZ,  
L.L.C. d/b/a Tinyz Tavern; JACQUELINE  
DANIELLE BULL; J DANIELLE LLC  
d/b/a Bulls Tavern; MARK DALRYMPLE;  
DAL-BAR INC. d/b/a Small Bar; ASHLEY  
TIPPER; RL TIPPER LLC d/b/a The Blind  
Elephant; BYRA WHEELLOCK; GREY  
GHOST ENTERTAINMENT LLC d/b/a  
Tailgators Bar & Billiards; STEVE  
GIMELL; ROCCO'S CIGAR BAR;  
JEFFREY LARIA; BUCKET SHOP LLC  
d/b/a Jeff's Bucket Shop; SHAWN  
SHRADER; THE KILTIED BUFFALO;  
MICHAEL LOMBARDO; B.GIANNI 13  
INC. d/b/a/ Lucky B's Around the Corner;  
WENDY HARRIS; BRU2U LLC d/b/a  
Crafty Beer, Wine & Spirits; ANDREW  
BROTHERS; AB FAMILY VENTURES  
INC. d/b/a RedDogs and d/b/a The  
Dubliner Pub and Patio; ANTHONY  
KEAREY; 2AK ENTERPRISES LLC d/b/a  
Tilt on Trade; WHITNEY VENTURES  
GROUP, LLC d/b/a The Union; IAN  
PURDY; REBOOT ARCADE BAR LLC  
d/b/a Reboot Arcade Bar; DREWRY  
WOFFORD IV; NC HOUSE PARTY LLC

**VERIFIED COMPLAINT and  
MOTION FOR TEMPORARY  
RESTRAINING ORDER, and  
PRELIMINARY AND PERMANENT  
INJUNCTION**

d/b/a Chemistry Nightclub; ROBERT KLEIN; STUMPTOWN STATION; KATHERINE KAUFER; AYKA LLC d/b/a The Palm Room; CALVIN G. FERGUSON; BUCKWILD TAVERN, LLC d/b/a Buck Wild Tavern; KAYLOR CLARK; PLAZA TAVERN; THOMAS PATTERSON; PATTERSON CAPITAL INVESTMENTS, LLC d/b/a TimeOut Tavern; BARBARA HOLZAPFEL; ISLAND TIME TAVERN LLC d/b/a Island Time Tavern; RUSSELL HENDRIX; PLAN B; JOHN BOVA; BLACK ROSE TAVERN; TESSA WICHTL; NORRIS TAVERN; JOSEPH APKARIAN; POUR HAUS LLC d/b/a The Pour House; BRIAN BEATTY; CHRISTY BEATTY; EASTBEAT ENTERPRISES LLC d/b/a Happy Hours; ROBERT SEARCY; ORIAN CORPORATION, INC. d/b/a Rack N' Rolls; KIMBERLY CAIN; JOHN CAIN; RLC CONCEPTS INC. d/b/a Second and Green Tavern; MICHAEL PATELLA; 61 INC. d/b/a The Tap; PATRICIA DEWBERRY; ON-AFTER PUB & GRUB; ANTHONY FLOYD; CRICKETS DART ROOM. LLC d/b/a Crickets Dart Room; TODD M. HARR; THEE BACKDOOR BAR & GRILL, LLC d/b/a 22 Klicks Bar & Grill; MICHAEL PUTNAM; POWER UP LLC d/b/a Powercade Arcade + Bar; BARBARA HUMPHREY GARRETT; HUMPHREY FARM; JEFF SWINSON; HOOLIGANS JAX LLC d/b/a Hooligans; JDS GLOBAL LLC d/b/a GoodFellas Bar and Lounge; ROBERT NICHOLS d/b/a Blacksheep Tavern; ANDREW THOMPSON; CRÈME DE LA CRÈME LLC d/b/a Secret Island Tavern; TRACY RAILEY; RAILEY'S INVESTMENT LLC d/b/a Rack-M Darts and Billiards; THOMAS N. GREB; CORNER POCKETS; DANIEL ALVIS; LISA ALVIS; MAPLE STREET TAVERN; DUSTIN COOK; TYRELL CORPORATION d/b/a Pravda and KGB; ROCKY CHRISTY; COUNTRY SALOON; RUBEN AGUIRRE; BIG DADDY'S ROADHOUSE; JANICE BYNUM; TACKLE BOX TAVERN LLC d/b/a Tackle

Box Tavern; ANTHONY CARDON;  
JKORP INVESTMENTS, LLC d/b/a The  
Brickyard; MATTHEW PAPURCA; TWIN  
RAVENS TAVERN; CAROLYN H.  
MORTON; BESSEMER BILLIARDS;  
SCOTT BLALOCK; CINC  
ENTERPRISES, LLC d/b/a Infused  
Charlotte; ASHLIE CADE; TRIPRESTO  
INC. d/b/a Bison Bar; BLOWFISH INC  
d/b/a Blowfish; GREG CLUTE; GREG  
CLUTE LLC d/b/a The Turn Sports  
Lounge and d/b/a East End Sports Bar &  
Billiards; BENJAMIN REESE; MR  
ENTERTAINMENT, LLC d/b/a Off the  
Wagon Dueling Piano Bar; CODY  
BRIDGES; CODY'S NORTH LLC d/b/a  
Cody's North; LUCK'S TAVERN; NICOLE  
BRUNS; SIN SITY LLC d/b/a Jeans and  
d/b/a Bikes, Babes & Beers; JAMIE  
JORDAN; THE COAT OF ARMS  
LOUNGE; TINA LAWSON; CLEAN  
SLATE BILLIARDS LLC d/b/a Clean  
State Billiards; STAN MATTHIAE;  
CODY'S III; MATT STOJIC; REVIVAL  
1869, LLC d/b/a Revival 1869; KARI  
COHOON; AMBER ENGLAND; WHITE  
RABBIT PUB LLC d/b/a White Rabbit  
Lounge and Red Monkey Lounge; JAMES  
MANLEY; JIMMY'S BAR AND GRILLE  
INCORPORATED d/b/a The Salty Hawg;  
CLAYTON PITCHER; PITCHER'S BAR  
LLC d/b/a Pitchers; BRIAN TIDWELL;  
SMOKEY'S BAR; LAWRENCE HAGUE;  
DOWNTOWN SPORTS BAR & LOUNGE;  
JAMES CARTER; JBST,LLC d/b/a  
Lagerheads Tavern; WAYNE ANSTEAD;  
ANSTEAD'S TOBACCO, INC. d/b/a Cigar  
Lounge; WILLIAM MULLIS; SNC LLC  
d/b/a The Cobbler; LSB GROUP LLC d/b/a  
The Post Sports Bar & Grill; DAVID  
THOMPSON; DOUBLE D BURNOUT  
SALOON; GERALD FEEST; FEEST, INC.  
d/b/a Spanky's Sports Bar and Grill;  
WANDA BRIDGEMAN; SUNDOGZ  
SPORTS BAR AND TAVERN INC. d/b/a  
Sundogz Sports Bar and Tavern; BRIAN  
WOLFE; MISTYLOU INVESTMENTS,  
LLC d/b/a Tobies; LECTOR BENNETT; B  
AND F WINE AND BEER

CORPORATION d/b/a Cape Fear Wine and Beer; TRAVIS BICKFORD; CHARLOTTE PUPS & PINTS, INC. d/b/a The Dog Bar; DANNY L. DALTON; RIZZO'S LLC d/b/a Rizzo's; CHARLES KRUEGER; 42<sup>ND</sup> STREET TAVERN; KIRSTEN MONAST; FBSBGM LLC d/b/a Brown Derby Pub; STAN MCDOWELL; BMC EVENTS, L.L.C. d/b/a Burnt Mill Creek Wine & Billiards; BMC EVENTS II, LLC d/b/a The Wild Goose Bar & Lounge; ZELMA L. RYAN; Z & J ENTERPRISE INC. d/b/a Zee's Tavern; JOSEPH LEONE; CLUB CHUBZ LLC d/b/a Chubby Buddha Sports Bar; CONNIE MCGRATH; SKILL SHARP TECHNOLOGIES, LLC d/b/a The Trap Bar & Billiards; TABITHA PERKINS; THIS IS FOR US CORP. d/b/a Buster's Billiards; JONATHAN WOODS; THE PEACE PIPE, LLC d/b/a The Peace Pipe; JUSTIN MARTIN; J&L EVENTS, LLC d/b/a The Heritage; SAMUEL HODGE; WELL TRAVELLED BEER, LLC d/b/a Well Travelled Beer; DAVID J. SCHEARER; FIRST STREET TAVERN LLC d/b/a First Street Tavern; DONALD LIEBES; GATE CITY BILLIARDS CLUB, LLC d/b/a Gate City Billiards Club; BELINDA HARRIS; HARRIS PAVILION, INC. d/b/a Baxter's Tavern; RONALD WAYNE EDWARDS; WILLOW TREE MUFFLER CENTER LLC d/b/a Willow Tree Service Center; JOHNNIE ALLIE MICHAELS; 3 THIRTY 3 SPORTS BAR; MOON SHINER-z LLC d/b/a Moon Shiner-z; HARRIKA'S BREW HAUS, INC. d/b/a Treehouse Beer Company; MATTHEW WRIGHT; HOOK & ANCHOR INDIAN BEACH LLC d/b/a Anchor Draffhouse; SUSAN COOKE; S. COOKE AMUSEMENTS, INC. d/b/a Sawmill II; ZACK T. MEDFORD; COMMON 414 INCORPORATED d/b/a Isaac Hunter's Tavern; BRAD BOWLES; 322 GLENWOOD INC. d/b/a Parliament; BEN YANNESSA; 200 MARKET STREET ILM INC. d/b/a Coglin's Wilmington,

Plaintiffs,

v.

ROY A. COOPER, III, in his official  
capacity as Governor of North Carolina,

Defendant.

Pursuant to Rules 3, 7, and 8 of the North Carolina Rules of Civil Procedure the  
plaintiffs, complaining of defendant, allege and say the following:

**CASE OVERVIEW AND INTRODUCTION**

Plaintiffs in this case have been harmed, and continue to suffer harm, from  
Governor Cooper's Executive Orders impacting the bar and tavern industry in the State of  
North Carolina. Plaintiffs include more than 185 entities that own and operate private bars  
across the State, the owners of those entities who rely on their shuttered businesses to  
make a living, and several employees of private bars who have been out of work since the  
Governor ordered their employers to close on March 17, 2020. While some period of closure  
may have been reasonable and necessary, plaintiffs file this lawsuit in order to seek equal  
treatment with other commercial and non-commercial establishments that have been  
allowed to reopen subject to restrictions that could also be implemented in plaintiffs'  
establishments. Specifically, plaintiffs seek declaratory relief and temporary, preliminary  
and permanent injunctive relief declaring that the Governor's and the State's actions  
pursuant to Governor Cooper's "Phase 2" Executive Order violate plaintiffs' rights under  
the North Carolina Constitution to the enjoyment of the fruits of their labor (Art. I, §1);  
constitute an unlawful taking of property; deny plaintiffs' right to equal protection of the  
law (Art. I, §19) by irrationally treating plaintiffs differently from restaurants, hotels,  
wineries, distilleries, taprooms, brewpubs, breweries, private clubs and eating  
establishments; and also violate the First and Fourteenth Amendments to the United  
States Constitution.

## PARTIES

1. Plaintiff North Carolina Bar and Tavern Association (“NCBATA”) is a North Carolina nonprofit corporation having its principal place of business in Wake County, North Carolina. The other plaintiff entities are members of NCBATA, or owners or employees of members.

2. The remaining plaintiffs in this action are a number of entities that own and operate private bars in the State of North Carolina, individuals who own the plaintiff entities, and individuals currently or formerly employed by the plaintiff entities. The particular identities and citizenship status of each of these individual and entity plaintiffs are as described in the attached **Exhibit A**.

3. Roy A. Cooper, III (“Gov. Cooper”) is the duly elected and serving governor of the State of North Carolina and is sued in that official capacity as the issuer of the Executive Orders complained of by plaintiffs in this action. Gov. Cooper’s official residence and office are located in Raleigh, Wake County, North Carolina.

## JURISDICTION, VENUE and CONDITIONS PRECEDENT

4. This Court has jurisdiction over this action pursuant to N.C. GEN. STAT. § 1-253.

5. This Court has personal jurisdiction over all the parties pursuant to N.C. GEN. STAT. § 1-75.4(1).

6. The Court further has jurisdiction over this action as it is brought to determine rights under Art. I, sec. 1 and sec. 19 of the North Carolina Constitution. These rights are self-executing, as part of the Declaration of Rights of the North Carolina Constitution.

7. Injunctive relief is proper as the actions of the defendant in prohibiting the plaintiffs from engaging in ordinary occupations presents a substantial impairment of

economic activity constituting a manifest threat of irreparable harm sufficient to invoke the equity jurisdiction of the Court.

8. Further, injunctive relief is proper in that the plaintiffs have suffered, are suffering and will continue to suffer irreparable harm due to the actions of defendant depriving them of their Constitutional right to work and enjoy the fruits of their labor. Plaintiffs have no plain, speedy, and adequate remedy at law. Damages will not fully redress any harm suffered by plaintiffs because they are unable to engage in constitutionally protected activities.

9. Venue for this action is proper in the Superior Court of Wake County pursuant to N.C. GEN. STAT. §§ 1-77 and 1-82.

10. This Court has subject matter jurisdiction over this action because plaintiffs seek declaratory and injunctive relief directly under the North Carolina Constitution and the United States Constitution, and no adequate remedy at law is available or appropriate. Therefore, sovereign immunity is inapplicable.

#### **THE NORTH CAROLINA CONSTITUTION**

11. Art. I, sec. 1 of the North Carolina Constitution provides:

**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 these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.**

12. Art. I, sec. 19 of the North Carolina Constitution provides:

**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.**

## GOVERNOR COOPER'S EXECUTIVE ORDERS

13. On March 10, 2020, Gov. Cooper issued Executive Order No. 116, declaring a State of Emergency to coordinate the State's response and protective actions to address the COVID-19 pandemic. A copy of Executive Order No. 116 is attached as **Exhibit B**.

14. Soon after issuing Executive Order No. 116, Gov. Cooper forecast his intent to issue an additional order that would effectively require the closure of all restaurants and bars in the State, for on-premises service and consumption. On March 17, 2020, Gov. Cooper issued Executive Order 118, entitled "Limiting Operations of Restaurants and Bars and Broadening Unemployment Insurance Benefits in Response to COVID-19." A copy of Executive Order No. 118 is attached as **Exhibit C**.

15. Executive Order No. 118 included directives that "bars" close entirely, and that "restaurants" limit the sale of food and beverages to carry-out, drive-through and delivery only, as of 5:00 p.m. on Tuesday, March 17, 2020. **Exhibit C**, § 1(a)(vi).

16. Executive Order No. 118 defines "restaurants" as "permitted food establishments, under N.C. Gen. Stat. § 130A-248, and other establishments that both prepare and serve food, including but not limited to, restaurants, cafeterias, food halls, dining halls, food kiosks at airports and shopping centers, or educational institutions, ('food courts'), as well as private or members-only clubs ("private clubs") where food and beverages are permitted to be consumed on premises." **Exhibit C**, § 1(b).

17. Executive Order No. 118 defines "bars" as "establishments that are not restaurants and that have a permit to sell alcoholic beverages for onsite consumption, under N.C. Gen. Stat. § 18B-1001." **Exhibit C**, § 1(c).

18. All of the establishments that plaintiffs own, operate and are employed by fall within the definition of "bars" under Executive Order No. 118.



19. Pursuant to Executive Order 118, plaintiffs' bars closed entirely, as did all other compliant bars in the State that did not meet the definition of a restaurant as set forth in Executive Order No. 118. Many of the entities defined as "restaurants" also closed entirely, although some continued limited operations to serve carry-out, drive-through and delivery customers.

20. Executive Order No. 118 stated that it would remain in effect until March 31, 2020, unless rescinded or replaced. **Exhibit C**, § 1(a)(vi).

21. On March 27, 2020, Gov. Cooper issued Executive Order No. 121, titled "Stay at Home Order and Strategic Directions for North Carolina in Response to Increasing COVID-19 Cases." A copy of Executive Order No. 121 is attached as **Exhibit D**.

22. Executive Order No. 121 included a general directive that all businesses close, subject to a long list of excepted "essential" businesses. Restaurants were included on the list of essential businesses, but limited to delivery, drive-through, curbside pick-up and carry-out. **Exhibit D**, § 2.C.19.

23. Executive Order No. 121 stated that "[t]his Executive Order is consistent with and does not amend or supersede prior COVID-19 related Executive Orders restricting the operations of restaurants and temporarily closing bars" (Exhibit C, § 2.C.19), and further provided that "the businesses, non-for-profit organizations and educational institutions that were ordered closed by Executive Order Nos. 118 and 120 shall remain closed" **Exhibit D**, § 2.H.

24. Executive Order No. 121 came into effect at 5:00 p.m. on Monday, March 30, 2020, and stated that it would remain in effect for 30 days unless repealed, replaced or rescinded. **Exhibit D**, § 7.

25. On April 23, 2020, Gov. Cooper issued Executive Order No. 135, titled "Extending Stay at Home Order and Orders Limiting Mass Gatherings, Requiring Social

Distancing, and Restricting Visitation at Long Term Care Facilities.” A copy of Executive Order No. 135 is attached as **Exhibit E**.

26. Executive Order No. 135 declared that the provisions impacting plaintiffs’ establishments in Executive Orders Nos. 118 and 121 would remain in effect until 5:00 p.m. on May 8, 2020. **Exhibit E**, § 1.

27. On May 5, 2020, Gov. Cooper issued Executive Order No. 138, titled “Easing Restrictions on Travel, Business Operations, and Mass Gatherings: Phase 1.” A copy of Executive Order No. 135 is attached as **Exhibit F**.

28. Executive Order No. 138 contained a definition of “restaurants” that is substantially identical to the definition of that term contained in Executive Order No. 118. **Exhibit F**, § 1, ¶ 7. However, Executive Order No. 138 changed the definition of “bars” to “establishments that are not eating establishments or restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) and 18B-1000(6) and have a permit to sell alcoholic beverages for onsite consumption under N.C. Gen. Stat. § 18B-1001.” **Exhibit F**, § 1, ¶ 2.

29. All of the establishments that plaintiffs own, operate and are employed by fall within the definition of “bars” under Executive Order No. 138.

30. Executive Order No. 138 directed that restaurants could remain open for off-premises consumption only, and that bars continued to be prohibited from opening at all. **Exhibit F**, §§ 4.A & 4.B.

31. Executive Order No. 138 became effective at 5:00 p.m. on May 8, 2020, and was to remain effective until 5:00 p.m. on May 22, 2020, unless repealed, replaced or rescinded. **Exhibit F**, § 14.

32. On May 20, 2020, Gov. Cooper issued Executive Order No. 141, titled “Easing Restrictions on Travel, Business Operations, and Mass Gatherings: Phase 2.” A copy of Executive Order No. 141 (the “Phase 2 Order”) is attached as **Exhibit G**.

33. The Phase 2 Order contained definitions of “bars” and “restaurants” that are substantially identical to those contained in Executive Order No. 138. **Exhibit G**, § 1, ¶¶ 1 & 7.

34. Section 6 of the Phase 2 Order listed several categories of businesses that would be allowed to reopen when that Order became effective, at 5:00 p.m. on May 22, 2020. The types of businesses allowed to reopen under Section 6 included retail businesses; private clubs; restaurants; personal care, grooming and tattoo businesses; indoor and outdoor pools; childcare facilities; and day camps and overnight camps. **Exhibit G**, § 6.

35. The Phase 2 Order allowed restaurants and private clubs to reopen for on-premises consumption, subject to their following these requirements:

- a. Limit the number of customers in indoor and outdoor seating areas to “Emergency Maximum Capacity,” as that phrase is defined in the Phase 2 Order;
- b. Limit the number of people and arrange tables so that groups are able to stay 6 feet apart;
- c. Generally limit seating to a maximum of 10 people at a single table;
- d. Encourage workers to wear face coverings when they are within 6 feet of others; and
- e. Follow the Core Signage, Screening, and Sanitation Requirements set forth in the Phase 2 Order (regarding increased use of disinfectant, hand-washing, etc.).

**Exhibit G**, § 6.C.2.

36. Section 8 of the Phase 2 Order lists several other types of business, including “bars,” that were required to remain closed. The only reasoning provided in the Phase 2 Order for requiring that bars and certain other business remain closed, while restaurants, private clubs, retail stores and other businesses could reopen, is as follows:

Section 8 keeps closed certain kinds of businesses and operations because those types of businesses, by their very nature, present greater risks of the spread of COVID-19. These greater risks are due to factors such as people traditionally interacting in that space in a way that would spread COVID-19, shared equipment that is repeatedly touched by customers or attendees, or a business model that involves customers or attendees remaining in a confined indoor space over a sustained period.

**Exhibit G, § 5.**

37. Section 4 of the Phase 2 Order provides the following exemptions:

Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities constituting the exercise of First Amendment rights are exempt from all 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 G, § 4.**

38. The Phase 2 Order came into effect at 5:00 p.m. on May 22, 2020, and remains in effect until 5:00 p.m. on June 26, 2020, unless repealed, replaced or rescinded.

**Exhibit G, § 16.**

39. Late in the day on May 22, 2020, the defendant released “guidance” confirming that breweries, taprooms, wineries, distilleries, and brewpubs were permitted to reopen under the Phase 2 Order. The Phase 2 order also permitted salons, barbershops and other close-contact businesses to reopen with limited occupancy. A copy of the “guidance” with respect to Executive Order No. 141 is attached as **Exhibit H**.

40. Under North Carolina’s statutory and regulatory scheme, there are at least eight types of entities operating bars in this State:

- a. Bars connected to restaurants (having 30% or greater food sales);

- b. Bars in hotels;
- c. Bars in distilleries;
- d. Bars in wineries;
- e. Bars in breweries;
- f. Bars in private clubs;
- g. Bars that are “eating establishments” (having less than 30% food sales); and
- h. Private bars.

41. Pursuant to the Phase 2 Order, seven of these eight types of bars are allowed to reopen. The only bars that are not allowed to reopen are private bars. All of the plaintiff's establishments are private bars prohibited from reopening under the Phase 2 Order.

#### **IMPACT OF PHASE 2 ORDER ON PLAINTIFFS**

42. Since March 17, 2020, through the filing of this Complaint, Gov. Cooper's executive orders have prohibited plaintiffs' establishments from operating. This prohibition continues under the most recent order, the Phase 2 Order.

43. As a direct result of this prohibition, thousands of managers, bartenders, security personnel and other employees have been laid off or furloughed, including several of the individual plaintiffs.

44. Also as a direct result of this prohibition, the other individual plaintiffs, owners of the plaintiff entities, have been barred from continuing their occupations and making money to support themselves and their families.

45. There is no meaningful distinction between the risks inherently present in private bars versus those in restaurants, hotels, wineries, distilleries, taprooms, brewpubs, breweries, private clubs or eating establishments. Many of the reopened establishments

include bar areas which are allowed to open under the Phase 2 Order. Interaction between bartenders and patrons at a private bar is not inherently more intimate than interaction between wait staff and patrons at a restaurant, hotel, winery, distillery, taproom, brewpub, brewery, private club or eating establishment.

46. Private bars, including those operated by the plaintiffs, are equally capable as restaurants, hotels, wineries, distilleries, taprooms, brewpubs, breweries, private clubs and eating establishments of complying with the reduced capacity, distancing, increased sanitation, and other requirements set forth for those establishments in the Phase 2 Order.

47. Many North Carolina private bars will go out of business entirely due to the extended period of enforced closure. Plaintiffs' establishments are among the lucky ones that have held out this long, and hope to be able to reopen. However, all of the plaintiffs' establishments are undergoing severe financial hardship and many will undoubtedly close for good if they are not allowed to reopen now, with reasonable restrictions to ensure employee and patron safety.

48. Plaintiffs have been and will continue to be irreparably harmed by Gov. Cooper's executive orders, including loss of their rights to earn a living and denial of their rights to equal protection.

**FIRST CAUSE OF ACTION**  
**(Declaratory Relief: Right to Earn a Living)**

49. Plaintiffs incorporate and restate the allegations contained in the preceding numbered paragraphs.

50. Plaintiffs are all owners, operators and employees of private bars that have been prohibited from reopening by the terms of the Phase 2 order and thus further deprived of their inalienable constitutional rights to enjoy the fruits of their labor and earn a living. Art. I, sec. 1 North Carolina Constitution.

51. The Phase 2 order is unconstitutional as applied to plaintiffs and is without appropriate justification for their continuing complete closure.

52. Plaintiffs have, are and will continue to be deprived of their right to earn a living if the Phase 2 order remains in force.

**SECOND CAUSE OF ACTION**  
**(Declaratory Relief: Equal Protection)**

53. Plaintiffs incorporate and restate the allegations contained in the preceding numbered paragraphs.

54. Plaintiffs' discriminatory exclusion from the Phase 2 order disallows them equal protection afforded them by the North Carolina Constitution. Art. I, sec. 19 North Carolina Constitution.

55. The Phase 2 order is also unconstitutional in that its Section 4 exemptions violate the First and Fourteenth Amendments to the United States Constitution.

56. There is no appropriate justification for defendant's disparate treatment from restaurants, hotels, wineries, distilleries, breweries, private clubs, eating establishments or "[w]orship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities constituting the exercise of First Amendment rights" under the Phase 2 order.

57. Plaintiffs have, are and will continue to be deprived of their right to equal protection under the law if the Phase 2 order remains in force.

**THIRD CAUSE OF ACTION**  
**(Declaratory Relief: Unlawful Taking)**

58. Plaintiffs incorporate and restate the allegations contained in the preceding numbered paragraphs.

59. As described above, plaintiffs are for-profit entities, their owners and employees who depend on income derived from their lawful operation under North Carolina law pursuant to permits obtained from and heavily regulated by the state.

60. Over a substantial number of years, plaintiffs have invested in their operations.

61. By their irrational exclusion from the reopening provisions of the Phase 2 order, plaintiffs are continuing to be deprived of revenues earned or to be earned from the lawful operation of their enterprises.

62. By their irrational exclusion from the reopening provisions of the Phase 2 order, plaintiffs' revenues from their operations will continue to be completely negated resulting in a taking of plaintiffs' property in violation of Art. 1, sec. 19 of the North Carolina Constitution without compensation or other remuneration.

**WHEREFORE, plaintiffs request a trial by jury and pray the Court as follows:**

1. For the entry of an order declaring that Executive Order 141 continuing the complete closure of plaintiffs' means to earn a living and enjoy their inalienable right to enjoy the fruits of their labor violates Art. 1, sec. 1 of the North Carolina Constitution;

2. For the entry of an order declaring that Executive Order 141 perpetuating the complete closure of plaintiffs' rights to enjoy the fruits of their labor while allowing restaurants, hotels, wineries, distilleries, taprooms, brewpubs, breweries, private clubs and eating establishments to re-open in part and completely exempting "[w]orship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities constituting the exercise of First Amendment rights" from its restrictions violates Art. 1, sec. 19 of the North Carolina Constitution and the First and Fourteenth Amendments to the United States Constitution and further constitutes an unlawful taking of plaintiffs' property;



3. For the issuance of a temporary restraining order, preliminary injunction, and permanent injunction preventing defendant and others from enforcing Executive Order 141 as it applies to plaintiffs and their businesses;

4. For the entry of an order compensating plaintiffs for defendant's unlawful taking in violation of Art. 1, sec. 19 of the North Carolina Constitution;

5. That plaintiffs have and recover their costs, including attorneys' fees, as may be allowed by law; and


6. Awarding plaintiffs such other and further relief as the Court may deem just and proper.

**MOTION FOR TEMPORARY RESTRAINING ORDER**  
**AND/OR PRELIMINARY INJUNCTION**

Pursuant to G.S. § 1-485, Rule 65 of the North Carolina Rules of Civil Procedure, and Local Rules 2.8 and 14, plaintiffs respectfully move for entry of a temporary restraining order and preliminary injunction as set forth in their Verified Complaint. In support of their motion, plaintiffs rely on their Verified Complaint and the affidavits filed in conjunction with its filing. Counsel for plaintiffs, in conformance with the North Carolina Rules of Civil Procedure and Local Rule 14.3, will notify defendant and/or his counsel that a judicial action is being requested to enjoin him. Written notice of the time and place for hearing will be delivered by similar means when such time and place are known.

Respectfully submitted, this the 4<sup>th</sup> day of June, 2020.

**STEVENS MARTIN VAUGHN & TADYCH, PLLC**



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Michael J. Tadych

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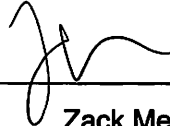
Facsimile: (866) 593-7695

*Attorneys for Plaintiffs*

**VERIFICATION OF COMPLAINT**

The undersigned Zack Medford, affirming under the penalties for perjury, that he has read the foregoing Complaint and that the allegations of fact made therein are true of his own knowledge, except as to the matters alleged upon information and belief, which allegations he is informed and believes to be true.

This 4<sup>th</sup> day of June, 2020.

Signature:  \_\_\_\_\_  
Printed Name: **Zack Medford** \_\_\_\_\_