

Cause No. \_\_\_\_\_

STIRR DALLAS, LLC, CITIZEN  
UPTOWN, LIMITED LIABILITY  
COMPANY, THAT'S NOT A TYPO, LLC,  
NOT UPTOWN, LLC., BIG FACE  
HENDO'S, LLC, REALHART, LLC, THE  
SIDE STREET BAR, INC. and Michael  
Blohm d/b/a Island Club,

Plaintiffs,

v.

GREGORY WAYNE ABBOTT, IN HIS  
OFFICIAL CAPACITY AS GOVERNOR  
OF TEXAS,

Defendant.

IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

## **TEMPORARY RESTRAINING ORDER**

**CAME ON TO BE HEARD** the Application For Temporary Injunctive Relief ("Motion") filed by Plaintiffs Stirr Dallas, LLC ("Stirr Dallas"), Citizen Uptown, Limited Liability Company ("Citi"), That's Not a Typo, LLC ("TNT"), Not Uptown, LLC ("Not Uptown"), Big Face Hendo's, LLC ("Big Face"), RealHart, LLC ("RealHart"), The Side Street Bar, Inc. ("Side Street") and Michael Blohm d/b/a Island Club ("Island Club"), collectively hereinafter ("Plaintiffs") and on consideration of the Motion of Plaintiffs for a temporary restraining order, the response of the Defendant, the exhibits and declarations submitted by the parties, having held a hearing on this date in which counsel for both sides presented evidence and argument, and having found and concluded, for the specific reasons required under Texas Civil Procedure 680 that Plaintiffs have shown (1) a likelihood of success on the merits of at least some of their claims, (2) that they will suffer irreparable harm if a temporary restraining order is not issued, and (3) that the

balance of harms and the public interest weigh in favor of granting the temporary restraining order.

Specifically, the Plaintiffs are entities who are businesses that are licensed solely as bars (hereinafter referred to as the “Stand-Alone Bars”), who filed Plaintiffs’ Original Petition, Application for Temporary Restraining Order and Application for Temporary Injunction (“Petition”) in this Court challenging the constitutionality of the recently enacted Governor Abbott’s Executive EO GA-28 (“EO GA-28”) under the Texas Constitution. The Plaintiffs allege in their Petition that EO GA-28 is arbitrary, capricious and lacks any rational relationship to any legitimate state interest.

The Supreme Court, in *In re Salon A La Mode, et al*, No. 20-0340, 2020 WL 2125844 (Tex. May 5, 2020), set forth the exacting standards to be applied, especially in times of a pandemic, and stated in pertinent part that:

The Constitution is not suspended when the government declares a state of disaster.” *In re Abbott*, No. 20-0291, \_\_\_ S.W.3d \_\_\_\_, \_\_\_\_, 2020 WL 1943226, at \*1 (Tex. Apr. 23, 2020). All government power in this country, no matter how well-intentioned, derives only from the state and federal constitutions. Government power cannot be exercised in conflict with these constitutions, even in a pandemic.

In deciding whether to issue this temporary restraining order, I determined that strict scrutiny should be applied to EO GA-28 to determine if it is narrowly tailored to achieve a compelling governmental interest. There is no dispute that all parties believe that governmental action to fight the Coronavirus Pandemic is necessary. The governmental actions, however, must ultimately serve the purpose of legitimately advancing the health and wellbeing of our citizens, within the constitutional and statutory constraints that have allowed our form of government to endure and prosper; and must not be undertaken for political expediency, political pandering, and political gain.

It is clear that Governor Abbott has a compelling interest in the protection of the Citizens of the State of Texas from the Coronavirus Pandemic. Thus, the issue for which the Plaintiffs must show a likelihood of success on the merits is whether EO GA-28 is narrowly tailored to this interest.

Here, the Plaintiffs demonstrated that that EO GA-28 is not narrowly tailored to this legitimate, compelling interest and that less restrictive measures could have adequately addressed the threat. EO GA-28's singling out of the Stand-Alone Bars for shut down is likewise arbitrary and capricious when compared to EO GA-28's more favorable treatment of other, non-bar related businesses; such as gyms, amusement parks, professional sports, nail salons, massage parlors, and the like, all of which involve close, extended, crowded surroundings, some or all of which would present COVID-19 spreading risks at least as much as the Stand-Alone Bars, and none of which have been shut down.

Instead of shutting down the businesses other than the Stand-Alone Bars, Governor Abbott either let those businesses operate as normal, or, at most, imposed limited restrictions as to occupancy and operations. In other words, Governor Abbott, with respect to those businesses, imposed the least restrictive alternatives. Arbitrarily and capriciously, Governor Abbott chose not to impose the lesser, least restrictive, measures on the Stand-Alone Bars. Like the restaurants, the Stand-Alone Bars can and should have the opportunity to operate with the least restrictive measures in place.

The irreparable injury to the Plaintiffs has resulted from the passage and subsequent enforcement of EO GA-28 in that this shut down order which may ultimately force the Plaintiffs to shut down permanently with no recourse to monetary damages.

While the public certainly has an interest in protecting its citizens, the public interest is not served by the enforcement of an unconstitutional law. Indeed, to the extent that other members of the public who are not parties to this lawsuit may be effected by EO GA-28, the interest of the public is served by preservation of the status quo until such time that this Court, with the benefit of a fuller factual record and thorough advocacy from the parties, may more closely examine the constitutionality of EO GA-28.

Based on the foregoing findings and conclusions that the Plaintiffs have established a likelihood of success on the merits and irreparable harm, and that the balance of interests, including the interest of the public, weighs in favor of enjoining the enforcement of EO GA-28, **THEREFORE, IT IS HEREBY ORDERED** that the Motion is **GRANTED** and Defendant Gregory Wayne Abbott, in his official capacity as Governor of Texas, and, Defendant's officers, agents, servants, employees, including but not limited to the Texas Alcohol and Beverage Commission (TABC) and attorneys, and those persons in active concert or participation with Defendant who receive actual notice of this Order, are **TEMPORARILY RESTRAINED** from enforcing or prosecuting matters premised upon Governor Abbott's Executive EO GA-28 ("EO GA-28") at any time for any conduct that occurs while this Order is in effect including but not limited to: a) preventing Plaintiffs from operating their businesses; b) suspending the Plaintiffs licenses and instituting any enforcement actions against Plaintiffs based in any way upon EO GA-28 including through the TABC and/or any state regulatory agency.

This Temporary Restraining Order shall not be effective unless and until the Plaintiffs execute and file with the Clerk a bond, or cash in lieu thereof, in the amount of \$\_\_\_\_\_. If the Plaintiffs deposit cash in lieu of a bond and subsequently posts a bond, the Clerk of this Court is ordered to refund the cash deposit in full to the Plaintiffs.

This Temporary Restraining Order shall expire fourteen (14) days from the date it is signed unless it is extended. The Application for Temporary Injunctive Relief shall be heard on \_\_\_\_\_, 2020, at \_\_\_\_:\_\_\_\_.m.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 at \_\_\_\_:\_\_\_\_.m.

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**Honorable Judge Presiding**