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DC-20-09166

**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

**PLAINTIFFS' ORIGINAL PETITION AND APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND  
APPLICATION FOR TEMPORARY INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, 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 submit their Plaintiffs' Original Petition, Application for Temporary Restraining Order and Application for Temporary Injunction, complaining of and against Gregory Wayne Abbott, in his capacity as Governor of Texas ("Abbott"), in the above-styled and numbered cause as follows:

**DISCOVERY CONTROL PLAN**

1. Discovery in this cause is expected to be conducted under a Level 3 Discovery Control Plan.

**CLAIMS FOR RELIEF**

2. This is a suit for money damages, declaratory judgment, and injunctive relief. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek monetary relief in excess of \$1,000,000.

**THE PARTIES**

3. Plaintiff Stirr Dallas, LLC is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff Stirr's principal place of business is located in Dallas, Dallas County, Texas. Plaintiff Stirr owns and operates a business known as "Stirr" in Dallas, Texas (hereinafter referred to as "Stirr Restaurant"). Although Stirr Restaurant occupies its premises under "a restaurant certificate of occupancy," it is licensed as a bar with the Texas Alcohol and Beverage Commission ("TABC"). Plaintiff Stirr's business has been shut down as a result of EO GA-28.

4. Plaintiff Citizen Uptown, Limited Liability Company, is a is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff Citi's principal place of business is located in Dallas, Dallas County, Texas. Plaintiff Citi owns and operates a business known as "Citizen" in Dallas, Texas (hereinafter referred to as "Citi"), and is licensed as a bar with the TABC. Plaintiff Citi's business has been shut down as a result of EO GA-28.

5. Plaintiff That's Not a Typo, LLC is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff TNT owns, operates and does business as Tiny Victory's. Tiny Victory's is a business located in Dallas, Dallas County,

Texas, and is licensed as a bar with the TABC. Plaintiff TNT's business has been shut down as a result of EO GA-28.

6. Plaintiff Not Uptown, LLC is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff Not Uptown owns, operates and does business as High Fives ("High Fives"). High Fives is located in Dallas, Dallas County, Texas, and is licensed as a bar with the TABC. Plaintiff High Five's business has been shut down as a result of EO GA-28.

7. Plaintiff Big Face Hendo's, LLC is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff Big Face owns, operates and does business as The Whippersnapper (the "Whippersnapper"). The Whippersnapper is located in Dallas, Dallas County, Texas, and is a licensed bar with the TABC. Plaintiff The Whippersnapper's business has been shut down as a result of EO GA-28.

8. Plaintiff RealHart, LLC is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff RealHart owns, operates and does business as Play on West 6<sup>th</sup> ("Play on West"). Play on West is located in Austin, Travis County, Texas, and is a licensed bar with the TABC. Plaintiff Play of West's business has been shut down as a result of EO GA-28.

9. Plaintiff The Side Street Bar, Inc. is a corporation organized and existing under the laws of the State of Texas. Plaintiff Side Street operates a business in Terrell, Kaufman County, Texas, that is licensed as a bar with the TABC. Plaintiff Side Street's business has been shut down as a result of EO GA-28.

10. Plaintiff Michael Blohm d/b/a Island Club ("Island Club") is a Texas sole proprietorship organized and existing under the laws of the State of Texas. Plaintiff Island

Club is located in Dallas, Dallas County, Texas, and is a licensed bar with the TABC. Plaintiff Island Club's business has been shut down as a result of EO GA-28.

11. Defendant Governor GREGORY WAYNE ABBOTT is the Governor of the State of Texas and is the author of EO GA-28. Defendant is being sued in his official capacity and may be served at 1100 San Jacinto Boulevard, Austin, Texas 78701.

### INTRODUCTION

12. The Coronavirus Pandemic is quite possibly the single, greatest, threat of our lifetimes to our institutions, our way of life, and, sadly, our precious democratic principles and constitutional ideals. The greatest single antidote to the Coronavirus is not the dismantling of our institutions; but instead, the fortification of them, and the strength and foresight of the government to embrace and implement policies, rules and orders grounded in science, dedicated to the public good, and unwavering in the rights and protections guaranteed under the Texas and United States Constitutions.

13. Plaintiffs, *first and foremost*, most assuredly endorse, and actively encourage, governmental action to fight the Coronavirus Pandemic. This is not a case in which Plaintiffs are claiming that the government cannot, and should not, act. Those 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.

14. Since the Coronavirus Pandemic struck this great state, Defendant Abbott has issued a series of disparate, inconsistent, arbitrary and scientifically unfounded orders that have not just handcuffed the legitimate efforts to fight the pandemic, but have exacerbated the problem by giving the citizenry of this great state the false impression

that legitimate, well-reasoned, scientifically proven efforts have been, and are, being undertaken to ease the threat that this Pandemic poses. ***Nothing could be further from the truth.***

15. In the midst of this horrific pandemic, the Texas Supreme Court valiantly and courageously weighed in on the overwhelming importance of holding our elected officials, including Governor Abbott, to the exacting standards that the Texas State Constitution demands. With great sagacity, 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, as follows:

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 the weeks since American governments began taking emergency measures in response to the coronavirus, the sovereign people of this country have graciously and peacefully endured a suspension of their civil liberties without precedent in our nation's history. In some parts of the country, churches have been closed by government decree, although Texas is a welcome exception. Nearly everywhere, the First Amendment “right of the people to peaceably assemble” has been suspended altogether. U.S. Const. amend. I. In many places, people are forbidden to leave their homes without a government-approved reason. Tens of millions can no longer earn a living because the government has declared their employers or their businesses “non-essential.”

Those who object to these restrictions should remember they were imposed by duly elected officials, vested by statute with broad emergency powers, who must make difficult decisions under difficult circumstances. At the same time, all of us—the judiciary, the other branches of government, and our fellow citizens—must insist that every action our governments take complies with the Constitution, especially now. If we tolerate unconstitutional government orders during an emergency, whether out of expediency or fear, we abandon the Constitution at the moment we need it most.

Any government that has made the grave decision to suspend the liberties of a free people during a health emergency should welcome the opportunity to demonstrate—both to its citizens and to the courts—that its chosen measures are absolutely necessary to combat a threat of overwhelming severity. The government should also be expected to demonstrate that less restrictive measures cannot adequately address the threat. Whether it is strict scrutiny or some other rigorous form of review, courts must identify and apply a legal standard by which to judge the constitutional validity of the government's anti-virus actions. When the present crisis began, perhaps not enough was known about the virus to second-guess the worst-case projections motivating the lockdowns. As more becomes known about the threat and about the less restrictive, more targeted ways to respond to it, continued burdens on constitutional liberties may not survive judicial scrutiny.

Ideally, these debates would play out in the public square, not in courtrooms. No court should relish being asked to question the judgment of government officials who were elected to make difficult decisions in times such as these. However, when constitutional rights are at stake, courts cannot automatically defer to the judgments of other branches of government. When properly called upon, the judicial branch must not shrink from its duty to require the government's anti-virus orders to comply with the Constitution and the law, no matter the circumstances.

*In Re Salon A La Mode*, 2020 WL 2125844, \*1.

16. The latest in his series of emergency orders, Governor Abbott's Executive EO GA-28 ("EO GA-28"), is perhaps his most arbitrary.<sup>1</sup> Within EO GA-28, Governor Abbott singled out a specific class of persons, or businesses – businesses that are licensed solely as bars (hereinafter referred to as the "Stand-Alone Bars") – and, with three-hours' notice, shut the Stand-Alone Bars down completely (hereinafter referred to as the "Bar Shutdown Order").

17. The Bar Shutdown Order is arbitrary, capricious and lacks any rational relationship to any legitimate state interest. The Bar Shutdown Order **does not shut down all bars in the State of Texas**. Instead, the Order picks on a single class of

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<sup>1</sup> See **Exhibit "A,"** a true and correct copy of EO GA-28 attached hereto and incorporated by reference as if set forth herein in full.

businesses, only those stand-alone business licensed as bars. Importantly, the following businesses are unaffected by the Bar Shutdown Order:

- a. Bars affiliated with other facilities, such as hotels and, presumably, sports arenas, and bowling alleys (hereinafter referred to as “Affiliated Bars”); and,
- b. Bars in restaurants that are not licensed as bars with the TABC (hereinafter referred to as “Restaurant Bars”).

18. The business, health and safety issues presented by the Stand-Alone Bars, the Affiliate Bars, and the Restaurant Bars are indistinguishable. The only difference between the different bars, is that the Stand-Alone Bars have a bar license with the TABC.

19. The indistinguishable characteristics by and between the Stand-Alone Bars, Affiliated Bars and Restaurant Bars works both ways, however. Not only are all three businesses bars in every sense of the word, but many Stand-Alone Bars currently function, and others can be made to function, as restaurants. In fact, some of the Plaintiffs already function as restaurants. Rather than afford the Stand-Alone Bars with the opportunity to operate and implement the same restrictions that restaurants and hotels are permitted to do, Governor Abbott simply shut them down.

20. Logically, scientifically, and constitutionally, EO GA-28 serves no rational governmental purpose, and the Stand-Alone Bar Shutdown provision constitutes an arbitrary, capricious, taking of property, without due process and without just compensation. As demonstrated below, what the Stand-Alone Bar Shutdown Order does constitute is the political pandering of the Governor to the powerbrokers and political base that makes up the Governor’s Coronavirus Task Force.

**POLITICAL PANDERING/NO RATIONAL REASON**

21. Governor Abbott assembled a task force to deal with the COVID pandemic that is largely comprised of business leaders (hereinafter referred to as the Texas COVID Taskforce”). Not coincidentally, EO GA-28, including the Stand-Alone Bar Shutdown provision, reflects the biases of the Texas COVID Taskforce.

22. The individuals that comprise the Texas COVID Taskforce include some of the titans of various industries. These individuals, and the industries they represent, include:

- **Robert B. Rowling:** Chairman of TRT Holdings, Inc., whose investments include Omni Hotels (the “Hotel Industry”) and Gold’s Gym (the “Gym Industry”).
- **Tilman Fertitta:** Chairman, CEO and sole owner of Landry’s Inc., the Golden Nugget Hotel and Casinos (“Hotel Industry”), the NBA Houston Rockets (“Professional Sports Industry”) and recognized as a world leader in the dining (“Restaurant Industry”), hospitality, entertainment, gaming industries *with 600 restaurants, hotels, amusement parks* (“Amusement Park Industry”), *and aquariums worldwide*.
- **Bobby Cox:** Owner and operator of Bobby Cox Companies, Inc., including Rosas Café & Tortilla Factory, Taco Villa, and Texas Burger (“Restaurant Industry”).

23. Notably missing from the Texas COVID Taskforce is any individual who owns, operates or who is even involved in the Stand-Alone Bar industry. Not coincidentally, with the exception of the river tubing industry, the Stand-Alone Bar Industry is the only industry suffering a total shutdown under EO GA-28.

24. This point bears repeating and specification, despite the obvious COVID related perils inherent in: a) the Gym Industry, b) the amassing of large crowds of active, shouting, eating and drinking people in the Professional Sports Industry; c) the amassing of large crowds screaming, active, eating and drinking people in the Amusement Park



Industry; d) the existence of bars in the Hotel Industry; and e) the virtually identical opportunities for Stand-Alone Bars to operate as the functional equivalent of restaurants, EO GA-28 ***only shuts down the Stand-Alone Bars and only deprives the Stand-Alone Bars of any opportunity to implement policies and procedures that are deemed effective in the Restaurant Industry, the Hotel Industry, the Amusement Park Industry, the Gym Industry and the Professional Sports Industry.***

25. To understand how irrational the Bar Shutdown Order is, the Court need look no further than the obvious chasm between the Order's application to "Stand-Alone Bars," such as Plaintiffs' bars, and what will be referred to herein as "Affiliated Bars."<sup>2</sup>

26. Affiliated Bars are, for all intents and purposes, functionally and practically indistinguishable from their Stand-Alone Bar counterparts. Their own distinguishing feature is that they are located in a hotel or other establishment. The functional equivalency of Affiliated Bars to Stand-Alone Bars is aptly demonstrated by the following photographs of actual, Affiliated Bars that are still in business and not shut down by the Bar Shut Down Order. The only thing accomplished by the Bar Shutdown Order is the illusion that Governor Abbott has acted in a manner to advance the public's health, when it does not. Such illusory governmental action can actually harm the public it pretends to protect, by giving the public a false sense of security that, by following the dictates of the law, they are protected. With no rational relationship to any governmental interest being

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<sup>2</sup> Affiliated Bars are bars that are located within hotels or other establishments. While there are no Stand-Alone Bar owners on the Texas COVID Task Force, one prominent member of the task force is Robert Rowling. Mr. Rowling's companies include the Omni Hotel Chain and Gold's Gym

served, EO GA-28 does nothing but raise false hope in the public, while pandering to the Governor's political influencers.

27. **The Lobby Bar at The Frisco Omni Hotel - Open**



**The Living Room Bar at The W Hotel Dallas - Open**

AMERICAN

**The Living Room Bar**

Mix it up with friends old and new at The Living Room Bar, where we serve a never-boring blend of cocktails and other drinks until midnight. Crystal chandeliers and faux-stone tables give this bold space in Victory Park a fresh style all its own.

Open for breakfast, lunch and dinner

[DETAILS](#)



## The Neighborhood Services Bar at The Frisco Omni Hotel - Open

OMNI FRISCO HOTEL  
11 COWBOYS WAY  
FRISCO, TEXAS 75034

PHONE: (469) 287-0000

[DIRECTIONS](#)

*Dining*

NEIGHBORHOOD SERVICES IN FRISCO

LOBBY BAR  
NEIGHBORHOOD SERVICES  
THE EDGE BAR



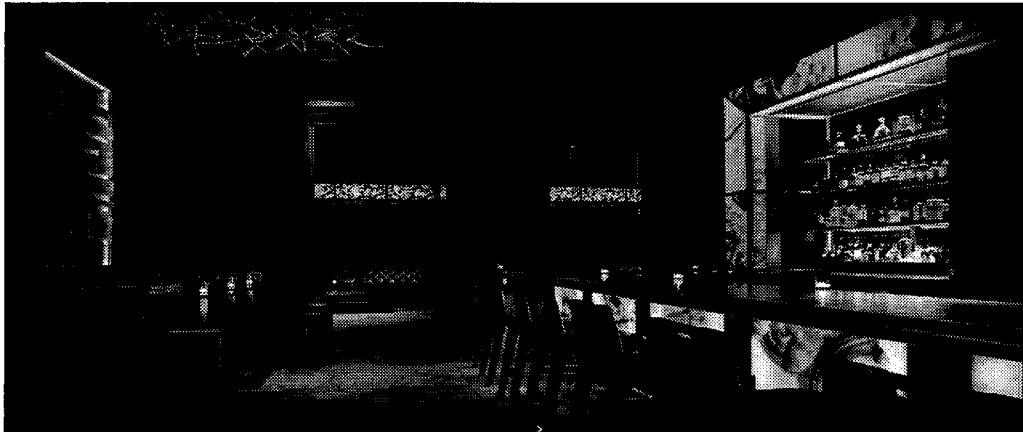
Certificate of Excellence 2019  
5569 Reviews  


OMNI FRISCO HOTEL  
4.5/5  
314 reviews  




11 Cowboys Way  
Frisco, Texas 75034  
(469) 287-0400

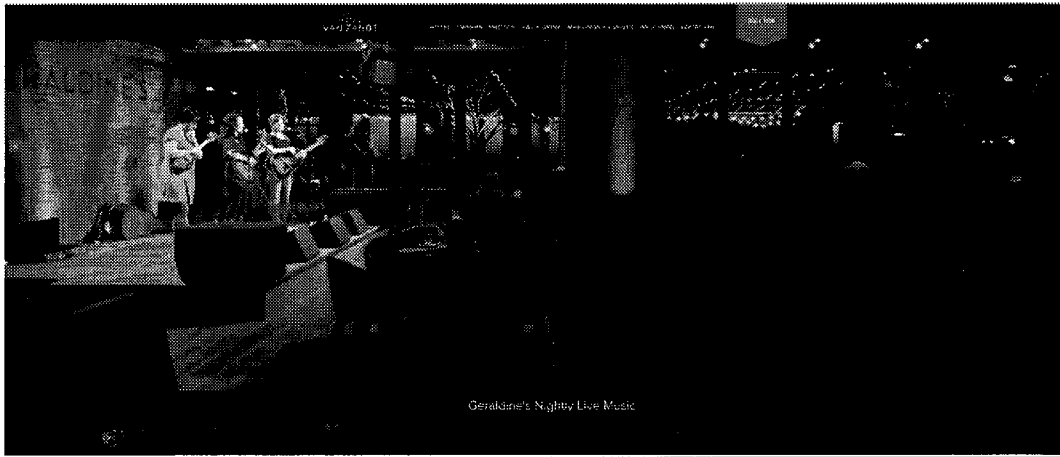
**The Rattlesnake Bar at the Ritz Carlton Dallas -Open**

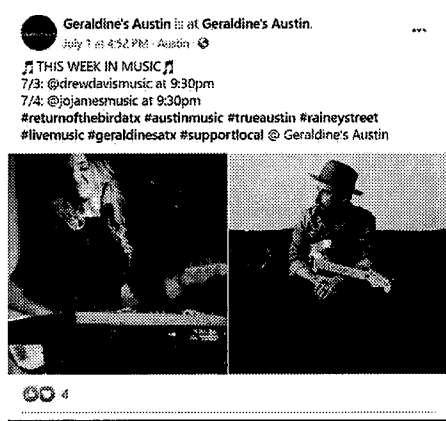
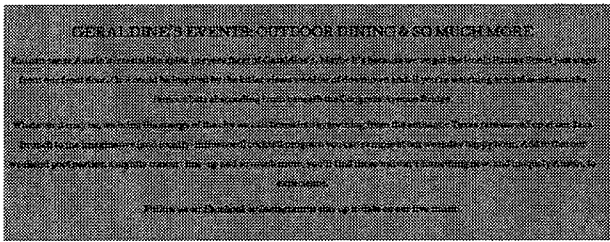


**The H Bar at the Houston Post Oak Hotel - Open**



**Geraldine's Austin at the Van Zandt Hotel (LIVE MUSIC) - Open**





28. The rationale of the Bar Shutdown Order is not only undermined by the fact that the Affiliated Bars are deemed not to be a health hazard, but also by the fact that the order imposes the undue burden of shutting down Stand-Alone Bars, without giving them the opportunity to modify their operations to comport with the same restrictions as restaurants. In fact, many of the Stand-Alone Bars, with the exception of being licensed as a “bar,” are indistinguishable from their “restaurant” counterparts, as shown below:

### Stand-Alone “Bar” Stirr – Closed<sup>3</sup>

SHARABLES		MAINS	
GRANDPAPA'S GRASS-FED FRIES	11	STIRR BURGERS	14
SMOKED BACON FALLOWS	12	STIRR CHICKEN	18
CRISP CALAMARI	13	STIRR PORK CHOPS	22
GRANDPAPA'S GRASS-FED STEAK	14	STIRR STEAK	26
GRANDPAPA'S GRASS-FED BEEF	15	STIRR RIBS	30
GRANDPAPA'S GRASS-FED PORK	16	STIRR RIBS	34
GRANDPAPA'S GRASS-FED CHICKEN	17	STIRR RIBS	38
GRANDPAPA'S GRASS-FED RIBS	18	STIRR RIBS	42
GRANDPAPA'S GRASS-FED RIBS	19	STIRR RIBS	46
GRANDPAPA'S GRASS-FED RIBS	20	STIRR RIBS	50
GRANDPAPA'S GRASS-FED RIBS	21	STIRR RIBS	54
GRANDPAPA'S GRASS-FED RIBS	22	STIRR RIBS	58
GRANDPAPA'S GRASS-FED RIBS	23	STIRR RIBS	62
GRANDPAPA'S GRASS-FED RIBS	24	STIRR RIBS	66
GRANDPAPA'S GRASS-FED RIBS	25	STIRR RIBS	70
GRANDPAPA'S GRASS-FED RIBS	26	STIRR RIBS	74
GRANDPAPA'S GRASS-FED RIBS	27	STIRR RIBS	78
GRANDPAPA'S GRASS-FED RIBS	28	STIRR RIBS	82
GRANDPAPA'S GRASS-FED RIBS	29	STIRR RIBS	86
GRANDPAPA'S GRASS-FED RIBS	30	STIRR RIBS	90
GRANDPAPA'S GRASS-FED RIBS	31	STIRR RIBS	94
GRANDPAPA'S GRASS-FED RIBS	32	STIRR RIBS	98
GRANDPAPA'S GRASS-FED RIBS	33	STIRR RIBS	102
GRANDPAPA'S GRASS-FED RIBS	34	STIRR RIBS	106
GRANDPAPA'S GRASS-FED RIBS	35	STIRR RIBS	110
GRANDPAPA'S GRASS-FED RIBS	36	STIRR RIBS	114
GRANDPAPA'S GRASS-FED RIBS	37	STIRR RIBS	118
GRANDPAPA'S GRASS-FED RIBS	38	STIRR RIBS	122
GRANDPAPA'S GRASS-FED RIBS	39	STIRR RIBS	126
GRANDPAPA'S GRASS-FED RIBS	40	STIRR RIBS	130
GRANDPAPA'S GRASS-FED RIBS	41	STIRR RIBS	134
GRANDPAPA'S GRASS-FED RIBS	42	STIRR RIBS	138
GRANDPAPA'S GRASS-FED RIBS	43	STIRR RIBS	142
GRANDPAPA'S GRASS-FED RIBS	44	STIRR RIBS	146
GRANDPAPA'S GRASS-FED RIBS	45	STIRR RIBS	150
GRANDPAPA'S GRASS-FED RIBS	46	STIRR RIBS	154
GRANDPAPA'S GRASS-FED RIBS	47	STIRR RIBS	158
GRANDPAPA'S GRASS-FED RIBS	48	STIRR RIBS	162
GRANDPAPA'S GRASS-FED RIBS	49	STIRR RIBS	166
GRANDPAPA'S GRASS-FED RIBS	50	STIRR RIBS	170
GRANDPAPA'S GRASS-FED RIBS	51	STIRR RIBS	174
GRANDPAPA'S GRASS-FED RIBS	52	STIRR RIBS	178
GRANDPAPA'S GRASS-FED RIBS	53	STIRR RIBS	182
GRANDPAPA'S GRASS-FED RIBS	54	STIRR RIBS	186
GRANDPAPA'S GRASS-FED RIBS	55	STIRR RIBS	190
GRANDPAPA'S GRASS-FED RIBS	56	STIRR RIBS	194
GRANDPAPA'S GRASS-FED RIBS	57	STIRR RIBS	198
GRANDPAPA'S GRASS-FED RIBS	58	STIRR RIBS	202
GRANDPAPA'S GRASS-FED RIBS	59	STIRR RIBS	206
GRANDPAPA'S GRASS-FED RIBS	60	STIRR RIBS	210
GRANDPAPA'S GRASS-FED RIBS	61	STIRR RIBS	214
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GRANDPAPA'S GRASS-FED RIBS	63	STIRR RIBS	222
GRANDPAPA'S GRASS-FED RIBS	64	STIRR RIBS	226
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GRANDPAPA'S GRASS-FED RIBS	66	STIRR RIBS	234
GRANDPAPA'S GRASS-FED RIBS	67	STIRR RIBS	238
GRANDPAPA'S GRASS-FED RIBS	68	STIRR RIBS	242
GRANDPAPA'S GRASS-FED RIBS	69	STIRR RIBS	246
GRANDPAPA'S GRASS-FED RIBS	70	STIRR RIBS	250
GRANDPAPA'S GRASS-FED RIBS	71	STIRR RIBS	254
GRANDPAPA'S GRASS-FED RIBS	72	STIRR RIBS	258
GRANDPAPA'S GRASS-FED RIBS	73	STIRR RIBS	262
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GRANDPAPA'S GRASS-FED RIBS	84	STIRR RIBS	306
GRANDPAPA'S GRASS-FED RIBS	85	STIRR RIBS	310
GRANDPAPA'S GRASS-FED RIBS	86	STIRR RIBS	314
GRANDPAPA'S GRASS-FED RIBS	87	STIRR RIBS	318
GRANDPAPA'S GRASS-FED RIBS	88	STIRR RIBS	322
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GRANDPAPA'S GRASS-FED RIBS	97	STIRR RIBS	358
GRANDPAPA'S GRASS-FED RIBS	98	STIRR RIBS	362
GRANDPAPA'S GRASS-FED RIBS	99	STIRR RIBS	366
GRANDPAPA'S GRASS-FED RIBS	100	STIRR RIBS	370



<sup>3</sup> Although licensed as a bar, Stirr's Certificate of Occupancy is as a restaurant.

**“Restaurant” – Del Frisco’s in Plano, Texas - Open<sup>4</sup>**



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<sup>4</sup> Del Frisco Restaurants are owned by Landry’s, Inc., whose Chairman and CEO, Tilman Fertitta, is a member of Governor Abbott’s Task Force.



**Zin Zen Wine Bistro in McKinney, Texas (LIVE MUSIC) - Open**



29. The Stand-Alone Bar Industry has been arbitrarily and capriciously singled out by the Governor. There is no rational explanation as to why the Governor totally shutdown the Stand-Alone Bars, many of whom operate in all respects as restaurants and most of whom could implement the same restrictions and modifications as allowed for restaurants, yet allowed the restaurants all to remain open, with restrictions. So too, there is absolutely no rational explanation as to why “bars” located within politically powerful establishments, such as hotels, are not subject to the Bar Shutdown Order, but “bars” that are stand-alone, and owned by small business owners, are forced to shut down.

30. Guidelines set forth by the CDC likewise do not support Governor Abbott's disparate treatment as between Stand-Alone Bars and restaurants; and most certainly, as between Stand-Alone Bars and Affiliated Bars. To the contrary, the CDC treats all guidance on measures to implement for bars and restaurants in the same guidance and applies the same measures to both.<sup>5</sup>

31. Politics, rather than science and the CDC, have clearly governed Governor Abbott's decisions and orders. Since the inception of the pandemic, Governor Abbott's orders have eschewed the guidance and recommendations of the CDC and the nation's experts, including Dr. Anthony Fauci, he director of the National Institute of Allergy and Infectious Diseases ("Fauci"), by among other things, affirmatively precluding local governments for months from mandating the use of face coverings.

32. The arbitrary and capricious nature of the Stand-Alone Bar Shutdown Order is demonstrated not just by the irrationally unequal treatment of the Stand-Alone Bars *vis-à-vis* Affiliated Bars and restaurants, but also by the disparity in the treatment of other, far more potentially risky industries, *vis-à-vis* the Stand-Alone Bar industry.

33. For each of the industries represented in the Texas COVID Task Force, EO GA-28 provides the means for their businesses to remain open, albeit, for some, if certain restrictions are put in place.

34. For instance, with respect to the Gym Industry, which, in other states has been singled out as one of the highest risk, if not the highest risk, industries with respect

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<sup>5</sup> See, Centers for Disease Control and Prevention, *Considerations for Restaurants and Bars*, June 30, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>.

to the spread of COVID-19, EO GA-28 allows all gyms to open with 50% occupancy restrictions in place.

35. Governor Abbott's Order allow gyms to remain open, but not Stand-Alone Bars, is clearly politically motivated, arbitrary and capricious. Citing to a CDC paper, the United States Court of Appeals for the Sixth Circuit, in staying the district court's injunction enjoining enforcement of Michigan's gym shutdown order, acknowledged:

[E]ven the most ventilated indoor facility is susceptible to respiratory spread of the virus. The danger is only amplified when people congregate (even with social distancing) in a confined space and work out. By its nature, working out is sustained vigorous physical activity, which necessarily means heavy breathing and sweating and, therefore, acute, propulsive bursts of virus shedding by anyone in that confined space who might be infected. Apart from individual exercisers in proximity, there is the added risk of individuals working out together or organized groups working out for extended trainer-led sessions. And the risk of viral spread is only heightened further by the sharing of exercise equipment among many different people over the course of the day, even when good faith efforts are made to clean that equipment after each use.

At a fitness center, these factors merge to significantly increase the incidence of this highly contagious and asymptotically transmittable virus spreading.

36. Despite the high risk associated with the Gym Industry, EO GA-28 does not force the Gym Industry to shut down its facilities; but instead, provides for measures that may be undertaken to remain open. No such opportunity is afforded to the Stand-Alone Bar owners.

37. As with the Gym Industry, Governor Abbott also demonstrated an arbitrary and capricious obeisance to the Amusement Park Industry; another industry represented on the Texas COVID Task Force.

38. Like the Gym Industry, the Amusement Park Industry's entire business model is based upon crowds, adrenaline, and the shared use of rides and equipment. It's

not hard to imagine the “bursts of shedding” that takes place on roller coaster or other thrill rides. Like the Gym Industry, the Amusement Park Industry is not shut down by EO GA-28, but instead, is permitted to remain open, with capacity being reduced to 50%.

39. EO GA-28 singles out one industry for total shutdown, the Stand-Alone Bar industry. Nothing differentiates the Stand-Alone Bar Industry from the Affiliated Bar Industry, save and except for the latter’s presence on the Texas COVID Task Force, yet the Stand-Alone Bar Industry is shut down. The business models of the Stand-Alone Bar Industry, and its ability to institute restrictions, are parallel to the Restaurant Industry, yet the Restaurant Industry is not required to shut down. There is no rational basis for this. EO GA-28 is a random elimination of jobs of an entire sector of the service industry from people who want to work and need to work to support their families.

**EO GA-28 DEPRIVES PLAINTIFFS  
OF EQUAL PROTECTION UNDER THE TEXAS CONSTITUTION**

40. Article I, § 3 of the Texas Constitution guarantees equality of rights to all persons. It was designed to prevent any person, or class of persons, from being singled out as a special subject for discriminating or hostile legislation.

41. The Texas Constitution’s guarantee of equal protection is tempered somewhat by the practical reality that the mere act of governing often requires discrimination between groups and classes of individuals. A state simply cannot function without classifying its citizens for various purposes and treating some differently than others.

42. The conflict between the hypothetical ideal of equal protection and the practical necessity of governmental classifications has spawned a series of judicial tests for determining when classifications are and are not permissible. The general rule is that

legislation is presumed to be valid and will be sustained only if the classification, or distinction, drawn between the differing classes of people by the statute is rationally related to a legitimate state interest.

43. In the instant case, in order for EO GA-28 to be constitutional, there must be a rational relationship between the Order's separate classification and treatment of Stand-Alone Bars, and all the other classifications, including, but not limited to, the Affiliated Bars, restaurants, amusement parks, gym and fitness facilities, professional sporting events, and the like.

44. There is no rational basis for the distinction drawn. First, the Stand-Alone Bars and the Affiliated Bars are indistinguishable from each other. The mere fortune that a bar is located in a hotel or other facility does absolutely nothing to alter or change the inherent risks of the bar, if any, with respect to the present pandemic.

45. Second, the Stand-Alone Shutdown Order contained in EO GA-28 is arbitrarily based upon an establishments license as a "bar," and the percentage of alcohol served, notwithstanding the fact that these establishments can, and often do, function the same as their "restaurant" counterparts. In fact, many of the Plaintiffs' businesses, although they are licensed as bars, have certificates of occupancy as restaurants, just as the restaurants do.

46. Yet, nothing in EO GA-28 shuts down the bar portion of "restaurants," and nothing in EO GA-28 allows "bars" to make the same adjustments and enforce the same restrictions that will lead to the identical results as restaurants. Instead, restaurants remain open, while "bars" are forced to shut down.

47. Third, going beyond the "like-kind" businesses, the distinction drawn between "bars" and other businesses, such as gyms, fitness centers, amusement parks,

youth sports facilities, massage parlors, and the like, is completely arbitrary and serves no legitimate state interest.

48. Certainly, if gyms, amusement parks, sports arenas, and youth sport facilities, all of which function in an adrenaline fueled, equipment sharing, extreme shedding environment, can remain open through the implementation of very limited occupancy restrictions, Stand-Alone Bars can do the same. The denial of this equal protection violates the Texas Constitution.

**EO GA-28 VIOLATES THE TEXAS DISASTER RELIEF ACT**

**The Square Peg in the Round Hole**

49. In forcing the Stand-Alone Bars to close, Governor Abbott did not outright order the bars to close. Instead, the Stand-Alone Bar Shutdown Order contained in EO GA-28, states:

***People shall not visit bars*** or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC) and are not restaurants as defined above in paragraph number 6; provided, however, that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC.

50. While clever, the Stand-Alone Bar Shutdown Order is clearly cast in an attempt by Governor Abbott to manipulate the Texas Disaster Relief Act (the “TDRA”) to deprive the Stand-Alone Bar Owners of the compensation that the State of Texas is constitutionally and statutorily required to pay to the owners for the taking of their property.

51. Statutorily, the only authority given to Governor Abbott under the TDRA to limit, or prevent, people from any access is contained in Texas Gov’t Code, § 418.018(c), which provides:

The governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.

52. Section 418.018(c) allows the governor to apply ingress, egress and occupancy limits to disaster areas; not to specific classifications of establishments within a disaster area.

53. By closing the Stand-Alone Bars, Governor Abbott has, through the Stand-Alone Bar Shutdown Order, taken possession and control of the Stand-Alone Bars from their owners. In other words, Governor Abbott has commandeered the Stand-Alone Bars.

54. Texas Gov't Code, § 418.017(c) gives the governor the authority to take control of, or commandeer, specific private property within a disaster area. The section provides, however, that the property owner must be compensated for the governor's commandeering of the private property. Specifically, section 418.017(c) provides:

(c) The governor may commandeer or use any private property if the governor finds it necessary to cope with a disaster, subject to the compensation requirements of this chapter.

55. The compensation requirements for the governor's commandeering of private property within a disaster area are set forth in Texas Gov't Code, §§ 418.152 and 418.153.

56. Stand-Alone Bar Shutdown Order is clearly an exercise of control by Governor Abbott of the Stand-Alone Bars in this State; entitling the Stand-Alone Bar owners to compensation. By manipulating the Stand-Alone Bar Shutdown Order to appear to be a disaster area ingress and egress order, however, Governor Abbott has clearly stated that he does not intend to compensate the Stand-Alone Bar owners for the private property that he has commandeered.

**EO GA-28 VIOLATES THE EQUAL PROTECTION CLAUSE  
OF THE TEXAS CONSTITUTION**

57. Article I, § 3 of the Texas Constitution provides: “All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.”

58. EO GA-28 determines which people, services, and groups are permitted to operate their businesses, and who must shut down their business on three hours’ notice.

59. There is absolutely no discernable, legitimate, criteria that has any rational relationship to the governmental interest of stopping the spread of COVID-19.

60. As demonstrated above, the Stand-Alone Bars present nothing uniquely different than the Affiliated Bars or the Restaurant Bars in the nature, manner and extent of the business they conduct, or the purported COVID risks they present, yet the Stand-Alone Bars are completely shut down, and the Affiliated and Restaurant Bars are permitted to operate with limited restrictions. The *only* distinction between the Stand-Alone Bars versus the Affiliated and Restaurant Bars is that the latter all have representative on the Texas COVID Task Force, whereas the Stand-Alone Bars do not.

61. Governor Abbott’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 spreading risks at least as much as the Stand-Alone Bars, and none of which have been shut down.

62. 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.

63. 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.

64. It is not by coincidence that such authority to make or alter constitutional rights and/or create legislation is the province of the legislature and the people, not a unilateral decision by one person, Governor Abbott. Through his numerous executive orders, Governor Abbott, not the legislature, has created (or mimicked) classes of people, business, and services he defines as “essential services,” “non-essential services,” “reopened services,” and “closed” businesses. Through his executive orders, Governor Abbott has picked winners and losers, allowing some business to stay open, some to partially reopen, and ordering others closed. Starting on March 19, 2020, GA-08 ordered: “[E]very person in Texas shall avoid social gatherings in groups of more than 10 people,” “people shall avoid eating or drinking at bars, restaurants, and food courts, or visiting gyms or massage parlors,” “people shall not visit nursing homes or retirement or long-term care facilities,” and “schools shall temporarily close.” (Tab “C”). The number of ten people bears no reasonable relationship to the stated goal of limiting the spread of COVID-19; it is purely arbitrary. Why not 9 people? Or 11? Because the number ten has no reasonable or rational relationship to the purported goal of the executive orders, this limitation is arbitrary and void.

**CAUSES OF ACTION**

**DECLARATORY JUDGMENT THAT THE EXECUTIVE ORDER VIOLATES ARTICLE I, § 3 OF THE TEXAS CONSTITUTION**

65. Plaintiffs re-allege the factual allegations set forth above and incorporated herein by reference.

66. This Court may declare the rights and other legal relations of the parties in dispute whether or not further relief is or could be sought.

67. An actual and bona-fide controversy exists between the Plaintiffs and Defendant.

68. Plaintiffs seek a declaration that the Executive Order violates Article I, §3, of the Texas Constitution and is a denial of their equal protection of which they are entitled under the Texas Constitution.

69. Plaintiffs also seek a declaration that the forced closures of the Plaintiffs premises from state and local authorities is completely arbitrary and serves no legitimate state interest.

70. This Court has the power and authority to determine the existence or non-existence of any right, duty, power, liability, privilege, or any fact upon which the parties' legal relations depend. The Court further has jurisdiction over the Plaintiffs' request for declaratory relief against Defendant because the Declaratory Judgment Act waives governmental immunity when the plaintiff is challenging the validity of an ordinance, order, or government action. SEE TEX. CIV. PRAC. & REM. CODE §§ 37.004, 37.006.

71. The declaration sought with regard to the instant controversy is of a justiciable nature, does not amount to an advisory decree, and will settle the controversy between the parties.

**DECLARATORY JUDGMENT THAT THE EXECUTIVE ORDER VIOLATES THE TEXAS DISASTER RELIEF ACT (THE “TDRA”)**

72. Plaintiffs re-allege the factual allegations set forth above and incorporated herein by reference.

73. This Court may declare the rights and other legal relations of the parties in dispute whether or not further relief is or could be sought.

74. An actual and bona-fide controversy exists between the Plaintiffs and Defendant.

75. Plaintiffs seek a declaration that the Executive Order violates TDRA.

76. Plaintiffs also seek a declaration that by closing the Stand-Alone Bars, Governor Abbott has, through the Stand-Alone Bar Shutdown Order, taken possession and control of the Stand-Alone Bars from their owners.

77. Plaintiffs also seek a declaration that the Stand-Alone Bar Shutdown Order is clearly an exercise of control by Governor Abbott of the Stand-Alone Bars in this State; entitling the Stand-Alone Bar owners to compensation.

78. This Court has the power and authority to determine the existence or non-existence of any right, duty, power, liability, privilege, or any fact upon which the parties’ legal relations depend. The Court further has jurisdiction over the Plaintiffs’ request for declaratory relief against Defendant because the Declaratory Judgment Act waives governmental immunity when the plaintiff is challenging the validity of an ordinance, order, or government action. SEE TEX. CIV. PRAC. & REM. CODE §§ 37.004, 37.006.

79. The declaration sought with regard to the instant controversy is of a justiciable nature, does not amount to an advisory decree, and will settle the controversy between the parties.

## **Request for Temporary Restraining Order and Other Injunctive Relief**

80. Plaintiffs re-allege the factual allegations set forth above and incorporated herein by reference.

81. The purpose of a TRO is to preserve the status quo, which the supreme court has defined as "the last, actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (orig. proceeding) (quoting *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 358 S.W.2d 589, 589 (1962)). A TRO restrains a party from acting only during the pendency of a motion for temporary injunction, [\*\*13] i.e., until a full evidentiary hearing on the motion occurs. *Del Valle ISD v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992); see TEX. R. CIV. P. 680.

82. This requests for a temporary restraining order is supported by the Verification below of Brandon Hays.

83. Plaintiffs seek a temporary restraining order against Defendant prohibiting him from taking any steps to enforce the Executive Order referenced above.

84. Irreparable injury to the Plaintiffs has resulted from the passage and subsequent enforcement of the Order. After the enactment of the Order, TABC appeared at Plaintiffs places of businesses and instructed them to close or lose their liquor licenses.

85. The Plaintiffs are at great financial risk because of Defendant's actions. While mere monetary loss is not ordinarily sufficient to establish irreparable harm, it is sufficient "where the potential economic loss is so great as to threaten the existence of the movant's business." *Malone Mortg. Co. Am., Ltd. v. Martinez*, 2002 U.S. Dist. LEXIS 17857 (N.D. Tex. Sept. 23, 2002) (quoting *Atwood Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A.*, 875 F.2d 1174, 1179 (5th Cir. 1989); see also *Doran v. Salem Inn, Inc.*,

422 U.S. 922, 932 (1975); *Nat'l Screen Svc. Corp. v. Poster Exchange, Inc.*, 305 F.2d 647 (5th Cir. 1962).

86. The Defendant will not be harmed if the requested injunctive relief is granted. There is no harm to the Defendant by complying with a TRO. Accordingly, there is no harm to the Defendant in granting the relief requested, while the harm to the Plaintiffs, if such injunctive relief is denied-will be significant and likely insurmountable. To wit, the Defendant's wrongful actions have harmed and continue to only harm the Plaintiffs and their businesses.

87. Plaintiffs will suffer irreparable harm, injury, losses and damages if the Defendant is not immediately enjoined and restrained as requested herein. Plaintiffs have a substantial likelihood of prevailing on the merits; no harm or prejudice will result to the Defendant by the granting of the requested injunctive relief; and immediate and irreparable harm would result before notice can to be served and a hearing had hereon. Plaintiffs have a probable right to relief because the Defendant conduct shut down the Plaintiffs' businesses and violates the Texas Constitution and TDRA.

88. Accordingly, Plaintiffs respectfully requests this Court issue a temporary restraining order against the Defendant restraining him, his agents, representatives, employees or anyone acting on his behalf, until further order of the Court from taking any actions to enforce the Executive Order referenced above, 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 the Executive Order referenced above; and/or,
- c) preventing the TABC from enforcing Governor Abbott's EO GA-28.

89. The Plaintiffs do not believe a bond is necessary; however, they are ready and willing to post an appropriate bond in support of the temporary restraining order and the temporary injunction.

90. Plaintiffs further requests that this Court, after notice and hearing, issue a temporary injunction against the Defendant enjoining them, his agents, representatives, employees or anyone acting on his behalf, including the TABC, until final trial on the merits, from taking any actions to enforce the Executive Order referenced above, 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 the Executive Order referenced above; and/or c) preventing the TABC from enforcing Governor Abbott's EO GA-28.

**CONDITIONS PRECEDENT**

91. All conditions precedent to the Plaintiffs rights to recovery have been performed, have occurred, and/or have been waived.

**REQUEST FOR DISCLOSURE**

92. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, the Defendant is hereby requested to disclose the information or material described in Rule 194.2. This is a continuing duty and requires supplementation in accordance with the Texas Rules of Civil Procedure.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** The Plaintiffs respectfully request that the Defendant be cited to appear and answer, as required by law and that the Plaintiffs have the following relief:

- Temporary Restraining Order and Temporary Injunction;

- Permanent Injunction;
- A declaratory judgment declaring that EO GA-28 violates the Texas Constitution and the Texas Disaster Relief Act.
- Judgment against the Defendant for actual, economic, and non-economic damages in an amount within the jurisdictional limits of this Honorable Court;
- Costs of suit, attorneys' fees;
- Prejudgment and Post-judgment interest as provided by law;
- Exemplary damages; and,
- Such other and further relief, at law or in equity, to which the Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Jason H. Friedman

**Lawrence J. Friedman**

Texas Bar No. 07469300

lfriedman@fflawoffice.com

**Jason H. Friedman**

Texas Bar No. 24059784

jason@fflawoffice.com

**FRIEDMAN & FEIGER, LLP**

5301 Spring Valley Road, Suite 200

Dallas, Texas 75254

Telephone (972) 788-1400

Facsimile (972) 788-2667

**ATTORNEYS FOR THE PLAINTIFFS**

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 2.02:  
APPLICATION FOR TRO AND OTHER EX PARTE ORDERS**

Plaintiff further certifies that a copy of the Application and proposed order were served to Counsel for the Defendant at least 2 hours before the Application and proposed order are to be presented to the Court for decision.

/s/ Jason H. Friedman

\_\_\_\_\_  
**Attorney**

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 1.06: RELATED CASES**

Plaintiff certifies that no other related action exists that would require transfer pursuant to Local Rule 1.06.

/s/ Jason H. Friedman

\_\_\_\_\_  
**Attorney**



VERIFICATION

STATE OF TEXAS      §  
                                 §  
COUNTY OF DALLAS §

On this 8<sup>th</sup> day of July, 2020, before me, the undersigned Notary Public, personally appeared Brandon Hays, who after being duly sworn by me stated upon his oath as follows:

My name is Brandon Hays. I have read the foregoing Plaintiffs' Original Petition, Application for Temporary Restraining Order and Application for Temporary Injunction and I have personal knowledge of all facts stated in paragraphs 3-9, 16-19, 39,83,84,86 and 87 and that the statements contained therein are true and correct.

DocuSigned by:  
*B Hays*  
EE785B03AF62474...

\_\_\_\_\_  
Brandon Hays

Subscribed to and sworn to before me by Brandon Hays on the 8<sup>th</sup> day of July, 2020, to certify which witness my hand and official seal.

*Stacy Morrison*  
Notary Public for the State of Texas

My Commission Expires: 7/13/2022



# EXHIBIT A

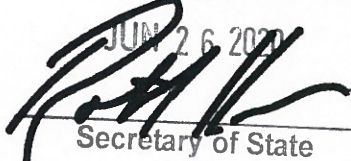


GOVERNOR GREG ABBOTT

June 26, 2020

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
8:45 AM 'CLOCK

The Honorable Ruth R. Hughs  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

JUN 26 2020  
  
Secretary of State

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-28 relating to the targeted response to the COVID-19 disaster as part of the reopening of Texas.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Davidson", with a long horizontal flourish extending to the right.

Gregory S. Davidson  
Executive Clerk to the Governor

GSD/gsd

Attachment

# Executive Order

BY THE  
GOVERNOR OF THE STATE OF TEXAS

Executive Department  
Austin, Texas  
June 26, 2020

## EXECUTIVE ORDER GA 28

*Relating to the targeted response to the COVID-19 disaster  
as part of the reopening of Texas.*

---

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain social-distancing restrictions for Texans in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I issued Executive Order GA-14 on March 31, 2020, expanding the social-distancing restrictions for Texans based on guidance from health experts and the President; and

WHEREAS, I subsequently issued Executive Orders GA-16, GA-18, GA-21, GA-23, and GA-26 from April through early June 2020, aiming to achieve the least restrictive means of combatting the threat to public health by continuing certain social-distancing restrictions, while implementing a safe, strategic plan to Open Texas; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texas residents safe is for all Texans to consistently follow good hygiene and social-distancing practices, especially those set forth in the minimum standard health protocols from DSHS; and

WHEREAS, due to recent substantial increases in COVID-19 positive cases, and increases in the COVID-19 positivity rate and hospitalizations resulting from COVID-19, targeted and temporary adjustments to the reopening plan are needed to achieve the

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JUN 26 2020

least restrictive means for reducing the growing spread of COVID-19 and the resulting imminent threat to public health, and to avoid a need for more extreme measures; and

WHEREAS, everyone must act safely, and to that end, this executive order and prior executive orders provide that all persons should follow the health protocols from DSHS, which whenever achieved will mean compliance with the minimum standards for safely reopening, but which should not be used to fault those who act in good faith but can only substantially comply with the standards in light of scarce resources and other extenuating COVID-19 circumstances; and

WHEREAS, the “governor is responsible for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from DSHS Commissioner Dr. Hellerstedt and other medical advisors, the Governor’s Strike Force to Open Texas, the White House, and the CDC, do hereby order the following on a statewide basis effective at noon on June 26, 2020:

Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment; *provided, however, that:*

1. There is no occupancy limit for the following:
  - a. any services listed by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.1 or any subsequent version;
  - b. religious services, including those conducted in churches, congregations, and houses of worship;
  - c. local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government;
  - d. child-care services;
  - e. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths; and
  - f. recreational sports programs for youths and adults;
2. Except as provided below by paragraph number 5, this 50 percent occupancy limit does not apply to outdoor areas, events, or establishments, except that the following outdoor areas or outdoor venues shall operate at no more than 50 percent of the normal operating limits as determined by the owner:
  - a. professional, collegiate, or similar sporting events;
  - b. swimming pools;
  - c. water parks;
  - d. museums and libraries;
  - e. zoos, aquariums, natural caverns, and similar facilities; and

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8:45am O’CLOCK

JUN 26 2020

- f. rodeos and equestrian events;
3. This 50 percent occupancy limit does not apply to the following establishments that operate with at least six feet of social distancing between work stations:
  - a. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;
  - b. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and
  - c. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services;
4. Amusement parks shall operate at no more than 50 percent of the normal operating limits as determined by the owner;
5. For any outdoor gathering in excess of 100 people, other than those set forth above in paragraph numbers 1, 2, or 4, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order;
6. For dine-in services by restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, the occupancy limit shall remain at 75 percent until 12:01 a.m. on June 29, 2020, at which time such restaurants may only operate at up to 50 percent of the total listed occupancy of the restaurant, subject to paragraph number 9 below;
7. People shall not visit bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission (TABC) and are not restaurants as defined above in paragraph number 6; provided, however, that the use by such bars or similar establishments of drive-thru, pickup, or delivery options for food and drinks is allowed to the extent authorized by TABC;
8. People shall not use commercial rafting or tubing services, including rental of rafts or tubes and transportation of people for the purpose of rafting or tubing;
9. For any business establishment that is subject to a 50 percent “total listed occupancy” limit or “normal operating limit,” and that is in a county that has filed with DSHS, and is in compliance with, the requisite attestation form promulgated by DSHS regarding minimal cases of COVID-19, the business establishment may operate at up to 75 percent of the total listed occupancy or normal operating limit of the establishment;
10. For purposes of this executive order, facilities with retractable roofs are considered indoor facilities, whether the roof is opened or closed;
11. Staff members are not included in determining operating levels, except for manufacturing services and office workers;
12. Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at [www.dshs.texas.gov/coronavirus](http://www.dshs.texas.gov/coronavirus), people should not be in groups larger than ten and should maintain six feet of social distancing from those not in their group;
13. People over the age of 65 are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the

home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation;

14. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS;
15. Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering;
16. People shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible; and
17. For the remainder of the 2019-2020 school year, public schools may resume operations for the summer as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency (TEA). Private schools and institutions of higher education are encouraged to establish similar standards. Notwithstanding anything herein to the contrary, schools may conduct graduation ceremonies consistent with the minimum standard health protocols found in guidance issued by TEA.

Notwithstanding anything herein to the contrary, the governor may by proclamation add to the list of establishments or venues that people shall not visit.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list or scope of services as set forth in this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

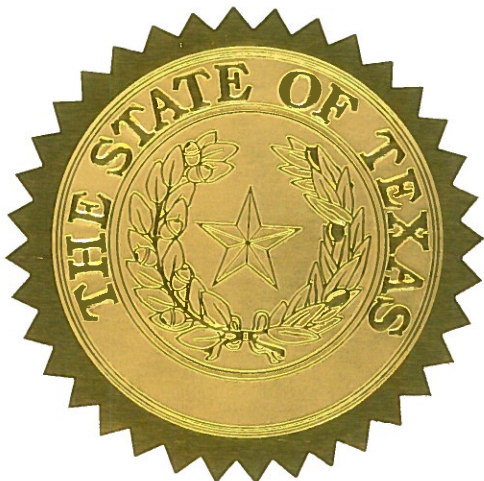
All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Order GA-26, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, or GA-27. This

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SECRETARY OF STATE  
8:45am O'CLOCK

JUN 26 2020

executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 26th  
day of June, 2020.

Handwritten signature of Greg Abbott in black ink.

GREG ABBOTT  
Governor

ATTESTED BY:

Handwritten signature of Ruth R. Hughs in black ink.

RUTH R. HUGHS  
Secretary of State

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
8:45am O'CLOCK

JUN 26 2020