

YES NO

EXHIBITS

CASE NO. 2020ch65

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Cook County, IL

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH06526

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

SHAKOU, LLC; PAZZI DI PIZZA PARK RIDGE,)
LLC; HAY CARAMBA! INC.; RANALLI'S PARK)
RIDGE LLC; HARP AND FIDDLE, INC.;)
NEOTECA INC.,)

10947668

Plaintiffs,)

Case No. 2020CH06526

vs.)

GOVERNOR JAY ROBERT PRITZKER, in his)
official capacity; ILLINOIS DEPARTMENT OF)
PUBLIC HEALTH; and COOK COUNTY)
DEPARTMENT OF PUBLIC HEALTH,)

Defendants.)

**COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, SHAKOU, LLC; PAZZI DI PIZZA PARK RIDGE, LLC, HAY CARAMBA! INC.; RANALLI'S PARK RIDGE LLC; HARP AND FIDDLE, INC.; and NEOTECA INC. (collectively, the "Plaintiffs"), by and through their attorneys, Locke Lord LLP, and for their *Complaint for Declaratory Judgment and Injunctive Relief* against the Defendants, GOVERNOR JAY ROBERT PRITZKER, in his official capacity ("Gov. Pritzker"), ILLINOIS DEPARTMENT OF PUBLIC HEALTH, and COOK COUNTY DEPARTMENT OF PUBLIC HEALTH (collectively, the "Defendants"), hereby allege as follows:

NATURE OF THE ACTION

1. Plaintiffs own and operate restaurants in Cook County, Illinois. According to Gov. Pritzker's Executive Order 2020-63 (issued on October 27, 2020), Plaintiffs are required to cease indoor dining, among other restrictions. But Gov. Pritzker lacks the authority to issue Executive Order 2020-63 because the emergency powers utilized to issue the order expired in April 2020.

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PARTIES

2. Plaintiff SHAKOU, LLC is a limited liability company duly organized pursuant to the laws of the State of Illinois, with its principal office located at 625 North Milwaukee Ave., Libertyville, Illinois 60048, and is engaged in the food services industry, operating a restaurant located in Libertyville, Illinois.

3. Plaintiff PAZZI DI PIZZA PARK RIDGE, LLC is a limited liability company duly organized pursuant to the laws of the State of Illinois, with its principal office located at 1 S. Prospect Ave., Park Ridge, Illinois 60068, and is engaged in the food services industry, operating a restaurant located in Park Ridge, Illinois.

4. Plaintiff HAY CARAMBA! INC. is a corporation duly organized pursuant to the laws of the State of Illinois, with its principal office located at 5525 Warren St., Morton Grove, Illinois 60053, and is engaged in the food services industry, operating a restaurant located in Park Ridge, Illinois.

5. Plaintiff RANALLI'S PARK RIDGE LLC is a limited liability company duly organized pursuant to the laws of the State of Illinois, with its principal office located at 43 S. Prospect, Park Ridge, Illinois 60068, and is engaged in the food services industry, operating a restaurant located in Park Ridge, Illinois.

6. Plaintiff HARP & FIDDLE, INC. is a corporation duly organized pursuant to the laws of the State of Illinois, with its principal place of business located at 110 Main St., Park Ridge, Illinois 60068, and is engaged in the food services industry, operating a restaurant located in Park Ridge, Illinois.

7. Plaintiff NEOTECA INC. is a corporation duly organized pursuant to the laws of the State of Illinois, with its principal place of business located at 130 S. Hough St, Barrington,

Illinois 60010, and is engaged in the food services industry, operating a restaurant located in Barrington, Illinois.

8. Defendant Gov. Pritzker is currently the duly elected Governor of the State of Illinois.

9. Defendant ILLINOIS DEPARTMENT OF PUBLIC HEALTH (the “Department”) is a department of the Illinois State Government specifically tasked with the promotion of health through the prevention and control of disease, among other things.

10. In Cook County, the local branch of the Department is Defendant COOK COUNTY DEPARTMENT OF PUBLIC HEALTH (the “CCDPH”).

JURISDICTION AND VENUE

11. Jurisdiction over this matter and the Defendants is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within this State), Section 2-209(b)(1) (natural person present within this State when served), 2-209(b)(2) (natural person domiciled or resident within this State when the cause of action arose, the action was commenced, and/or process was served), and Section 2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States).

12. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 as Defendant CCDPH is resident of Cook County and some of the acts giving rise to the causes of action set forth in the Complaint arose in Cook County.

FACTS COMMON TO ALL COUNTS

13. On March 9, 2020, Gov. Pritzker issued a proclamation declaring, as of that date, a “disaster” existed within Illinois as a result of the COVID-19 virus. A copy of Gov. Pritzker’s

declaration is attached hereto as Exhibit A, and expressly incorporated herein (“COVID Declaration 1”).

14. Gov. Pritzker issued the COVID Declaration 1 pursuant to the authority granted him under the Illinois Emergency Management Agency Act, 20 ILCS 3305 *et. seq.* (hereinafter “IEMAA”).

15. Section 7 of the IEMAA states: “In the event of a disaster, as defined in Section 4, the Governor may by proclamation declare that a disaster exists.” *See* 20 ILCS 3305/7.

16. The corresponding Section 4 of the IEMAA defines a “disaster” as follows:

“Disaster” means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism.

20 ILCS 3305/4.

17. In COVID Declaration 1, Gov. Pritzker specifically states that the COVID-19 virus is a “novel severe acute respiratory illness,” specifically classifying the virus as a currently existing “public health emergency” under Section 4 of the IEMAA. *See* Exhibit A, pp. 1-2.

18. Thus, in COVID Declaration 1, Gov. Pritzker invoked his emergency powers under the IEMAA by classifying COVID-19 as a “public health emergency.”

19. The emergency powers granted to the Governor under the IEMAA are limited in both duration and scope. According to the IEMAA, upon proper proclamation of a “disaster,” “the Governor shall have and may exercise for a period not to exceed thirty days,” 14 enumerated emergency powers. *See* 20 ILCS 3305/7.

20. Subsequent to COVID Declaration 1, Gov. Pritzker utilized his emergency powers through the issuance of various executive orders.

21. On April 1, 2020—prior to the expiration of the initial 30 days under COVID Declaration 1—Gov. Pritzker issued another disaster proclamation. See Exhibit B, referred to as “COVID Declaration 2.”

22. In COVID Declaration 2, Gov. Pritzker again stated that the COVID-19 virus is a “novel severe acute respiratory illness” and again classified it as a currently existing “public health emergency” under Section 4 of the IEMAA. See Exhibit B, pp. 1-2.

23. This time, however, Gov. Pritzker described COVID-19 as “a continuing disaster,” and thereby declared a continuation of his authority under the emergency powers of Section 7 of the IEMAA. See *id.*, pp. 2-3.

24. As a result of COVID Declaration 2, Gov. Pritzker utilized his emergency powers to execute and continue various executive orders through April 30, 2020. *Id.*

25. On April 30, 2020, Gov. Pritzker issued another proclamation of disaster. See Exhibit C, referred to as “COVID Declaration 3.”

26. In this third declaration, Gov. Pritzker yet again stated that the COVID-19 virus is a “novel severe acute respiratory illness” and again specifically classified it as a currently existing “public health emergency.” See Exhibit C, pp. 1-3.

27. As a result of COVID Declaration 3, Gov. Pritzker continued to utilize his emergency powers to execute and continue various executive orders until May 31, 2020.

28. Upon or shortly before the expiration of the then-existing proclamation order, Gov. Pritzker continued to issue additional and consecutive proclamations of disaster on May 29, 2020, June 26, 2020, July 24, 2020, August 21, 2020, September 18, 2020, and October 16, 2020

(“COVID Declaration 4,” “COVID Declaration 5,” “COVID Declaration 6,” “COVID Declaration 7,” “COVID Declaration 8,” and “COVID Declaration 9,” respectively). Copies of each successive declaration are attached hereto as Group Exhibit D, and expressly incorporated herein.

29. Therefore, from COVID Declaration 1 through COVID Declaration 9, Gov. Pritzker has attempted to wield the emergency powers under the IEMAA for more than 230 consecutive days.

30. The basis upon which Gov. Pritzker found a “disaster” existed in COVID Declaration 1 is the exact same “novel severe acute respiratory illness” (*i.e.*, COVID-19) identified in COVID Declaration 2 through COVID Declaration 9.

31. Based on his purported authority under COVID Declaration 9, Gov. Pritzker issued Executive Order 2020-63 (“EO 63”) on October 27, 2020. A true and correct copy of EO 63 is attached hereto as Exhibit E and expressly incorporated herein.

32. EO 63 targets Cook County restaurants and bars, requiring that they cease indoor dining altogether, among other limitations, effective October 28, 2020 at 12:01 a.m., for an unspecified duration. Exhibit E, pp. 2-3.

33. According to EO 63, Gov. Pritzker relies on the powers vested in him as the Governor of the State of Illinois, and specifically, Sections 7(1), 7(8), 7(9) and 7(12) of the IEMAA. Gov. Pritzker also declares that EO 63 is consistent with “public health laws.” See Exhibit E, p. 2.

34. Upon information and belief, the “public health laws” that Gov. Pritzker believes are consistent with his authority in EO 63 are found in the Illinois Department of Public Health Act (the “IDPHA”), 20 ILCS 2305, *et seq.*

35. The IDPHA provides for “general supervision of the interests of the health and lives of the people of the State.” *See* 20 ILCS 2305/2(a).

36. Under the IDPHA, the Department has “supreme authority in matters of quarantine and isolation.” *Id.*

37. Consistent with that authority, the Department may:

(a) “declare and enforce quarantine and isolation when none exists, and may modify or relax quarantine and isolation when it has been established.” 20 ILCS 2305/2(a).

(b) “order a person or group of persons to be quarantined or isolated or *may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease ... until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public’s health any longer exists.*” 20 ILCS 2305/2(b) (emphasis added).

38. Irrespective of the above, the IDPHA states:

“no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. The Department may, however, order a person or a group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. *In the event of an immediate order issued without prior consent or court order, the Department shall, as soon as practical, within 48 hours after issuing the order, obtain the consent of the person or owner or file a petition requesting a court order authorizing the isolation or quarantine or closure.*”

20 ILCS 2305/2(c) (emphasis added).

39. Thus, according to the IDPHA, when the Department has not obtained either consent of the owner or the local court, the Department has the discretion to issue an immediate order that must be heard, or ruled on by the court, within 48 hours (assuming a lack of consent). *See* 20 ILCS 2305/2(c).

40. In taking the non-consensual and non-court route in shutting down premises, the Department subsequently has a higher burden of proof to meet, among other requirements, in petitioning for closure. *Id.*

41. Further, the IDPHA mandates that, “owners of places that are ordered to be closed and made off limits to the public” be given specific written notice, which must include, but not be limited to: (1) notice of counsel, (2) notice of the reasons for the order, (3) notice of whether the order is immediate, (4) if immediate, “the time frame for the Department to seek consent or to file a petition requesting a court order,” and (5) notice of “anticipated duration” of the closure. *See* 20 ILCS 2305/2(c)

42. As of the date of this filing, EO 63 has ostensibly taken effect, and it appears the Department, and specifically the CCDPH, have adopted the EO 63 mitigation measures as their present policy.

43. Because the Department is an agency of the State of Illinois and because Gov. Pritzker is the chief executive officer of said state, upon information and belief, Gov. Pritzker is familiar with and charged with knowledge of the IDPHA.

44. Gov. Pritzker is also familiar with and charged with knowledge of the plan and administrative rules of the Department. Specifically, the Department has explicitly delegated its authority to order isolation, quarantine and closure to certified local health departments.

45. The Department’s promulgated administrative rules regarding procedural safeguards must be followed when restricting the movements or activities of the people, or closing businesses, to control disease spread. *See* Ill. Admin. Code tit. 77 pt. 690.1330 (2008).

46. The board of health of each county or multiple-county health department shall:
- (a) “Within its jurisdiction, and professional and technical competence, enforce and observe all State laws pertaining to the preservation of health....” *See* 55 ILCS 5/5-25013(A)(6).
 - (b) “Within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of the State Department of Public Health, to arrest the progress of the same.” *See* 55 ILCS 5/5-25013(A)(7).

COUNT I

***(Declaratory Judgment Pursuant to 735 ILCS 5/2-701
that Gov. Pritzker’s October 16, 2020, Proclamation is Void)***

47. Plaintiff restates and realleges paragraphs 1- 46 as though fully set forth herein.
48. To be clear, Plaintiffs do not dispute that on March 9, 2020, when Gov. Pritzker issued COVID Declaration 1, a “disaster” existed triggering his emergency powers for 30 days.
49. However, COVID Declaration 2 through COVID Declaration 9 are predicated on the exact same disaster, COVID-19.
50. The IEMAA does not authorize Gov. Pritzker to declare a “disaster” to manage an existing “disaster” for an additional 30 days, and certainly not *ad naseum*.
51. Because COVID Declaration 9 was used as a predicate to order closure of Plaintiffs’ indoor dining (among other things), Plaintiffs have a right to insist that Gov. Pritzker act solely within the scope of the authority granted to them by the legislature, and specifically be constrained from acting beyond the authority granted to him under the IEMAA and IDPHA.
52. In issuing COVID Declaration 9, and thereby extending his thirty-day emergency powers beyond 225 consecutive days, Gov. Pritzker has engaged in acts that go far beyond the powers granted to him by the legislature.

53. An actual controversy exists between the parties. Specifically, whether Gov. Pritzker had the authority to issue COVID Declaration 9 on October 16, 2020, thereby triggering his emergency powers, which he then utilized to issue EO 63 affecting Plaintiffs' businesses.

54. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

55. In the event that a declaration of rights is the only relief sought, by statute, such declaration may be set for an early and expedient hearing. *See* 735 ILCS 5/2-701(b).

WHEREFORE, the Plaintiffs pray that this Honorable Court enter an Order:

- (a) Declaring Gov. Pritzker's October 16, 2020 Proclamation void *ab initio*, as no new disaster existed on that date as defined in Section 4 of the IEMAA; and
- (b) Awarding such other and further relief as justice requires.

COUNT II

(Declaratory Judgment Pursuant to 735 ILLS 5/2-701 that EO 63 is Void)

56. Plaintiff restates and realleges paragraphs 1- 46 as though fully set forth herein.

57. Under the emergency powers made available to the governor upon declaration of a disaster, Gov. Pritzker issued Executive Order 2020-63 on October 27, 2020. *See Exhibit E.*

58. If COVID Declaration 9 is void, and no "disaster" currently exist under which Gov. Pritzker can exercise emergency powers authorized by the IEMAA, it follows that EO 63, which was issued in connection with COVID Declaration 9 and pursuant to Section 7 of the IEMAA, is also invalid.

59. Upon information and belief, Gov. Pritzker is the first Governor of this State to issue multiple proclamations for the same emergency (in the case at bar, nine consecutive times for a total of more than 250 days) for the purpose of exercising his emergency powers to attempt

to seize control of the movement and activities of people and forcibly close businesses within the State.

60. The aforementioned course of conduct by Gov. Pritzker was never intended under the IEMAA, subverts the role of the legislative branch, and is a wholly improper violation of the separation of powers.

61. Plaintiffs have a right to insist Gov. Pritzker not engage in activities designed to circumvent clear limitations on his authority imposed by the legislature, particularly where it causes severe harm to Plaintiffs, which is the case here.

62. An actual controversy exists between the parties regarding the authority of Gov. Pritzker to issue COVID Declaration 9 and use that as a predicate to continue to exercise emergency powers, including issuing new and specific restrictions on Cook County restaurants (including Plaintiffs' establishments) found in EO 63.

63. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

64. In the event that a declaration of rights is the only relief sought, by statute, such declaration may be set for an early and expedient hearing. *See* 735 ILCS 5/2-701(b).

WHEREFORE, Plaintiffs pray that this Honorable Court enter an Order:

- (a) Declaring COVID Declaration 2 through COVID Declaration 9 did not reset the 30-day emergency provisions under Section 7 of the IEMAA;
- (b) Declaring that EO 63, which finds its authority in section 7 of the IEMAA, is void *ab initio*; and
- (c) Granting such other and further relief as justice requires.

COUNT III

(Seeking a Declaratory Judgement finding that the IDPHA governs the conduct of state actors in this context)

65. Plaintiff restates paragraphs 1- 46 as though fully set forth herein.

66. In the event that no current disaster exists related to COVID-19 under the IEMAA, Gov. Pritzker lacks emergency powers and the Department is the supreme authority in matters of quarantine, isolation, closure, and making property off limits.

67. Plaintiffs do not dispute the Department has the authority to restrict a citizen's movement or activities and/or forcibly close the business premises if circumstances give rise to a sufficient public health risk, but this authority is not unbridled.

68. The legislative branch, in its sound discretion, placed the supreme authority over such matters with the Department pursuant to the IDPHA.

69. The Department has determined that relevant authority under the IDPHA must be exercised by each county's board of health in a manner consistent with state law.

70. Plaintiffs have a right to insist that Gov. Pritzker, the Department, and by extension the CCDPH, act solely within the scope of the authority granted to them by the legislature, and specifically be constrained from acting beyond the authority granted to them under the IEMAA and IDPHA.

71. An actual controversy exists between the parties in regard to the authority of the Department and Gov. Pritzker to enter and enforce those provisions of EO 63 that restrict the movement and activities of persons, and the closure and access to businesses, specifically restaurants and bars owned and operated by Plaintiffs.

72. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

73. In the event that a declaration of rights is the only relief sought, by statute, such declaration may be set for an early and expedient hearing. *See* 735 ILCS 5/2-701(b).

WHEREFORE, Plaintiffs pray that this Honorable Court enter an Order:

- (a) Declaring the proper authority to restrict a citizen's movement, activities, and/or forcibly close their business due to COVID-19 in this instance has been expressly delegated to the Department under the IDPHA; and
- (b) Granting such other and further relief as justice requires.

COUNT IV

(Seeking a Declaratory Judgement finding that the Department's Mitigation Measures of October 20, 2020, do not comply with the IDPHA requirements)

74. Plaintiff restates paragraphs 1- 46 as though fully set forth herein.

75. In the event that the Department and the CCDPH desire to take the mitigation efforts found in EO 63, and as alleged in their corresponding mitigation measures, effective October 28, 2020 at 12:01 a.m. (attached hereto as Exhibit F), they still must comply with the statutory requirements of the IDPHA.

76. Neither the Department's purported adoption of EO 63 nor the Department's mitigation measures abide by the requirements of Section (b) and (c), in terms of the specific notice required under the IDPHA. 20 ILCS 2305/2(b) & (c).

77. Therefore, the Department and the CCDPH have failed to give the proper notice required by the IDPHA for the closure or other restrictions on Plaintiffs' business/property, making any such enforcement attempt thereon invalid.

78. Plaintiffs have a right to insist the Department and the CCDPH act solely within the scope of the authority granted to them by the legislature through the IDPHA.

79. An actual controversy exists between the parties in regard to the authority of the Department and CCDPH to adopt and enforce EO 63 and subsequent mitigation measures, restricting access to businesses and properties such as Plaintiffs, and those similarly situated.

80. An immediate and definitive determination is necessary to clarify the rights and interests of the parties.

WHEREFORE, Plaintiffs pray that this Honorable Court enter an Order:

- (a) That both the Department and CCDPH have failed to comply with the IDPHA requirements for notice for closure/limitation of property as it pertains to Plaintiffs; and
- (b) Granting such other and further relief as justice requires.

**SHAKOU, LLC; PAZZI DI PIZZA PARK
RIDGE, LLC; HAY CARAMBA! INC.;
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FIDDLE, INC.; and NEOTECA INC.,**

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