

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**THE LOCAL SPOT, INC. d/b/a THE LOCAL )  
and GEOFFERY REID, )**

**Plaintiffs, )**

**vs. )**

**WILLIAM B. LEE, in his official capacity )  
as Governor of Tennessee, HERBERT H. )  
SLATERY, III, in his official capacity as )  
Attorney General and Reporter of Tennessee, )  
JOHN COOPER, in his official capacity as )  
Mayor of Metropolitan Nashville- )  
Davidson County, and MICHAEL )  
C. CALDWELL, in his official capacity as )  
Chief Medical Director of Health for )  
Metropolitan Nashville-Davidson County, )**

**Defendants. )**

**No. 3:20-cv-00421**

**DISTRICT JUDGE RICHARDSON**

**MAGISTRATE HOLMES**

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**PLAINTIFFS' MOTION FOR JOINDER AND TO AMEND**

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COME NOW Plaintiffs The Local Spot, Inc. and Geoffery Reid, by and through counsel, and pursuant to Rules 15 and 20 of the Federal Rules of Civil Procedure and respectfully moves this Court to afford Plaintiffs leave to amend their Petition to join additional plaintiffs: Harry O's Steakhouse, LLC, HTDC, LLC and Timothy Stephen Smith, who have similar claims under the law as Plaintiffs. Further, Plaintiffs seek to add facts which have transpired in recent weeks which support Plaintiffs' position their fundamentals rights have been violated. The Defendants have allowed tens of thousands of citizens to protest in the streets of Nashville with impunity. During this same time, Metro officials have specifically targeted restaurants and bars and issued

citations for innocuous violations. In particular, Metro officials have focused on and targeted the proposed Plaintiffs by inspecting their venues and attempting to unlawfully suspend their Beer Permit. Further, the Beer Permit Board has failed to provide proposed Plaintiffs due process in adjudicating the complaints against them.

Plaintiffs' counsel has consulted with counsel for the Defendants as indicated by local rules. Counsel for the State has advised that the State does not have an objection to the proposed amendment. Counsel for Metro is still reviewing the proposed amendment. Notably, Plaintiffs' counsel was not able to present the proposed amendment until late yesterday afternoon and, thus, Metro's counsel has not had sufficient time to respond. While Metro's counsel indicates she does not believe Metro will object, additional time is needed. Plaintiffs will file a supplemental pleading upon notification.

Attached hereto and filed contemporaneously herewith is a proposed First Amended Verified Petition for Declaratory Judgment and Injunctive Relief and a Memorandum of Law in support of Plaintiffs' Motion.

WHEREFORE, having good cause shown, Plaintiffs respectfully submit that the Court should enter an Order affording Plaintiffs leave to amend their Petition as set forth in the proposed First Amended Verified Petition for Declaratory Judgment and Injunctive Relief.

Respectfully submitted,

**SOVEREIGNTY LEGAL FOUNDATION**

/s/ Kirk L. Clements  
**KIRK L. CLEMENTS, BPR No. 20672**  
Attorney for Plaintiff  
105 Broadway, Ste. 2  
Nashville, TN 37201  
(615) 964-8000

(615) 953-1902  
[kirk@kirkclementsllaw.com](mailto:kirk@kirkclementsllaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading has been forwarded to the attorneys and addresses listed below, by placing such in the U.S. Mail with sufficient postage affixed thereto or via the Court's electronic filing system on this the 26<sup>th</sup> day of June, 2020:

Keli Oliver, Esq.  
Michael R. Dohn, Esq.  
Metro Dept. of Law  
P.O. Box 196300  
Nashville, Tennessee 37219

Janet M. Kleinfelter, Esq.  
Cody N. Brandon, Esq.  
Miranda Jones  
Tenn. Attorney General's Office  
P.O. Box 20207  
Nashville, Tennessee 37202

/s/ Kirk L. Clements  
KIRK L. CLEMENTS

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**THE LOCAL SPOT, INC. d/b/a THE LOCAL, )  
GEOFFERY REID, HARRY O’S )  
STEAKHOUSE, LLC d/b/a KID ROCK’S )  
BIG ASS HONKY TONK AND STEAKHOUSE,)  
HTDG, LLC d/b/a HONKY TONK CENTRAL, )  
and TIMOTHY STEPHEN SMITH )**

**Plaintiffs,**

**vs.**

**WILLIAM B. LEE, in his official capacity )  
as Governor of Tennessee, HERBERT H. )  
SLATERY, III, in his official capacity as )  
Attorney General and Reporter of Tennessee, )  
JOHN COOPER, in his official capacity as )  
Mayor of Metropolitan Nashville- )  
Davidson County, and MICHAEL )  
C. CALDWELL, in his official capacity as )  
Chief Medical Director of Health for )  
Metropolitan Nashville-Davidson County and )  
in his individual capacity, METROPOLITAN )  
NASHVILLE-DAVIDSON COUNTY BEER )  
PERMIT BOARD and KIA JARMON in her )  
official capacity as a Board Member and in her )  
individual capacity, )**

**Defendants.**

**NO. 3:20-cv-0421**

**DISTRICT JUDGE RICHARDSON**

**MAGISTRATE JUDGE HOLMES**

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**AMENDED VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

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**COME NOW** Plaintiffs The Local Spot, Inc., Geoffery Reid, Harry O’s Steakhouse, LLC,  
HTDG, LLC and Timothy Stephen Smith and respectfully aver as follows:

## INTRODUCTION

1. The government and citizens of the State of Tennessee and Metropolitan Nashville-Davidson County (“Metro”) are facing a major health crisis caused by COVID-19.

2. The officials and agencies of Tennessee and Metro, including and especially the Defendants, face very difficult, life-altering decisions related to responding to the threat and effects of COVID-19.

3. The government is unquestionably afforded police power to reasonably address public health and safety issues, including such epidemics as COVID-19, and such powers afforded the State of Tennessee and Metro are set forth clearly in the laws, rules and regulations related to the control of dangerous, communicable diseases

4. Notwithstanding, the major crisis and the police powers afforded Defendants, it is a well-established principle in our jurisprudence that state and local governments cannot contravene the inalienable, natural rights of the people as protected under the U.S Constitution and the Tennessee Constitution.

5. The Defendants’ plan of quarantining the entire population and closing all “non-essential” businesses has resulted in the unprecedented and devastating deprivation of citizens’ fundamental and natural rights, including, the right to travel, the freedom of association, the freedom of religion, the right to be free from illegal seizure, property rights, economic rights and other civil liberties protected by the U.S. Constitution and Tennessee Constitution.

6. Further, Defendants’ efforts have resulted in economic devastation to the state and county. The Governor’s office estimates that 15% of Tennessee workers have filed for unemployment, retail businesses have lost \$870 million in net sales and Tennessee GDP has been reduced by \$5 billion dollars.

7. Plaintiffs likewise have experienced economic devastation, as has many other business owners. Plaintiff Reid and Plaintiff Smith are owners and operators of bar/restaurants and live music venues which have been shuttered by the Defendants in the name of addressing COVID-19.

8. Given the unprecedented deprivation of citizens' fundamental and economic rights, Plaintiffs bring this cause of action pursuant to the crucial and unique concept of the separation of powers to achieve an independent judiciary review and subsequent adjudication of the constitutionality and legality of Defendants' orders and actions.

9. Plaintiffs respectfully submit that in depriving Plaintiffs of their fundamental rights, Defendants' orders and actions were not the least restrictive means of addressing the spread and effects of COVID-19 as best evidenced by the unparalleled economic devastation caused by Defendants' orders.

10. Defendants have failed to use many of the mechanisms and authority afforded under the law to the government to handle deadly, communicable disease, to include, mandatory reporting by citizens who suspect they may have been infected, mandatory quarantining of those who have been infected, quarantining the susceptible segments of the population, monitoring those who have been quarantined and pursuing contact tracing and testing to ameliorate the spread of the virus.

11. Defendants wholesale approach of severely limiting citizens' travel and business activities constitute the unlawful deprivation of Plaintiffs' inalienable and natural rights protected under the U.S. Constitution and the Tennessee Constitution and such has been even more unprecedented and devastating than the effects of COVID-19.

12. Plaintiffs seek a declaratory judgment and injunctive relief that the Defendants' orders and actions set forth herein are unconstitutional and are otherwise unlawful and, therefore,

Defendants must repeal and discontinue enforcement of their Orders to the extent they are unconstitutional or unlawful.

13. Plaintiffs further seek other remedies afforded pursuant 42 U.S.C. § 1983 related to the deprivation of their fundamental rights.

14. Plaintiffs do not seek to eliminate or negate the legal and scientific methods the Defendants have employed or should employ to address the real threat of COVID-19, such as quarantining those who are infected, monitoring those who are infected, regulations related to protective equipment, such as masks and gloves, testing, contact tracing, social distancing or similar reasonable methods.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over all federal claims in this Complaint arising under the United States Constitution pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (a)(4), and under 42 U.S.C. § 2000cc et seq., which confer original jurisdiction on United States Courts in civil actions to redress the deprivation of rights, privileges, and immunities, as stated herein.

16. This Court has jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. § 2201 and 2202.

17. This Court has pendant and supplemental jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367(a) and to the extent the Court finds such state issues are novel or complex, the Court has the authority to certify questions to the Tennessee Supreme Court.

18. Venue lies in this District pursuant to 28 U.S.C. § 1391 as the Plaintiffs and Defendants are located in this District and all events giving rise to this action occurred in this District.

## PARTIES

19. Plaintiff The Local Spot, Inc. d/b/a The Local is a Tennessee corporation formed and operating under Tennessee law with its principle place of business located at 110 28<sup>th</sup> Avenue N., Nashville, Tennessee 37203. At all times material hereto, The Local was a functioning, profitable restaurant/bar and live music venue which was licensed to serve food and alcohol by the State of Tennessee and Metropolitan Nashville-Davidson County.

20. Plaintiff Geoffery Reid, who is Caucasian, is a resident of Tennessee and owns a private residence and real property in Sumner County, Tennessee. At all times material hereto, Reid was the sole owner and operator of The Local.

21. Plaintiff Harry O's Steakhouse, LLC d/b/a Kid Rock's Big Ass Honky Tonk and Steakhouse ("Kid Rock's") is a Tennessee corporation formed and operating under Tennessee law with its principle place of business located at 221 Broadway, Nashville, Tennessee 37201. At all times material hereto, Kid Rock's was a functioning, profitable, restaurant/bar and live music venue, which was licensed to serve food and alcohol by the State of Tennessee and Metropolitan Nashville.

22. Plaintiff HTDG, LLC d/b/a Honky Tonk Central ("Honky Tonk Central") is a Tennessee corporation formed and operating under Tennessee law with its principle place of business located at 409 Broadway, Nashville, Tennessee 37201. At all times material hereto, Honky Tonk Central was a functioning, profitable, restaurant/bar and live music venue, which was licensed to serve food and alcohol by the State of Tennessee and Metropolitan Nashville.

23. Plaintiff Timothy Stephen Smith, who is Caucasian, is a resident of Tennessee and owns a private residence and real property in Davidson County, Tennessee. At all times material hereto, Smith was the public face and managing member of Kid Rock's and Honky Tonk Central.

24. Defendant William B. Lee is the Governor of the State of Tennessee and primarily



derives his authority and power from Article III of the Tennessee Constitution. The Governor can be served through the Attorney General and Reporter of Tennessee, to wit: Herbert W. Slatery, III, P.O. Box 20207, Nashville, Tennessee 37202. At all times material hereto, Governor Lee was acting in his official capacity and under the color of state law.

25. Defendant Herbert W. Slatery, III is the Attorney General and Reporter of Tennessee. Pursuant to Tenn. Code Ann. § 29-14-107 and Tenn. R. Civ. Pro. 24.04, when the constitutionality of a statute is challenged, the Attorney General and Reporter shall be served, to wit: Herbert W. Slatery, III, P.O. Box 20207, Nashville, Tennessee 37202.

26. Defendant John Cooper is the Mayor and Chief Executive Officer of Metropolitan Nashville-Davidson County (herein after sometimes referred to “Metro”) and can be served in his official position at his principle place of business, to wit: Office of Mayor, 1 Public Square, Suite 100, Nashville, Tennessee 37201. At all times material hereto, Mayor Cooper was acting in his official capacity and under the color of law.

27. Defendant Michael C. Caldwell is the Chief Medical Director of Metropolitan Nashville-Davidson County and can be served in his official position via the Chief Executive Officer of the county, to wit: Mayor John Cooper, 1 Public Square, Suite 100, Nashville, Tennessee 37201 and in his individual capacity at his primary place of business, to wit: 2500 Charlotte Avenue, Nashville, Tennessee 37209.

28. Defendant Metropolitan Nashville-Davidson County Beer Permit Board is an entity created and operating under the Metropolitan Nashville-Davidson County Code of Laws and has jurisdiction over holders of beer permits. The Board can be served via its Executive Director, to wit: Benton McDonough, 800 Second Avenue, South, Nashville, TN 37210.

29. Defendant Kia Jarmon is a Board Member of the Metropolitan Nashville-Davidson

County Beer Permit Board and as such, has jurisdiction over holders of beer permits. She can be served in her official position via the Board's Executive Director, to wit: Benton McDonough, 800 Second Avenue, South, Nashville, Tennessee 37210 and in her individual capacity at the following address: 211 McGavock Pike, Nashville, Tennessee 37214.

### **FACTUAL ALLEGATIONS**

#### **A. DEPRIVATION OF GEOFFERY REID'S FUNDAMENTAL RIGHTS**

30. Plaintiff Geoffery Reid is a long-time resident of Tennessee and has family and associations throughout Tennessee.

31. Reid has owned and operated The Local Spot, Inc. ("The Local") since 2017.

32. Reid funded the purchase and opening of The Local primarily with funds which he saved or procured.

33. The Local is a small bar/restaurant and live music venue with approximately 3,500 square feet of space. Reid brought in many local musicians to play for locals and tourist alike and live music is an essential part of his business.

34. Reid invested a considerable and concerted effort each day for the last two years establishing his business and building up a solid, loyal patronage.

35. Prior to the Defendants' Orders closing his establishment, Reid was having a record year at The Local, with revenue up 56% from the previous year.

36. Upon being closed by Metro's Orders, Reid fully complied with the Orders and immediately closed his business and he did not generate revenue between March 16, 2020 through May 11, 2020.

37. Reid's business model does not include significant revenue from pick up or

delivery as he derives most of his revenue from live music events.

38. Upon the issuance of Defendants' Orders, Reid did an analysis of whether it would be profitable to open to provide food/alcohol via delivery and he determined given his establishment is known primarily for live music and certainly not for take out or delivery, it would cost him more to be open than to be closed.

39. In Reid's professional opinion he could not open profitably just to serve food/alcohol via delivery or take out.

40. The Local's gross revenue primarily consists of sales of alcohol during live music events. On average, The Local has between 28 to 30 live music events each month.

41. Upon being closed, Reid had to breach several contracts he had with various vendors.

42. Despite being closed, Reid continued to pay his employees as he felt a sense of responsibility to his employees.

43. Reid was required to continue to pay other costs and expenses associated with The Local, including, paying his rent obligations due under the lease, even though he was not able to generate revenue.

44. Upon being able to apply for a loan through the federal Paycheck Protection Program, Reid did so, but the funds were depleted before he could be approved.

45. Reid was approved during the second round of funding of the Paycheck Protection Program.

46. As a direct result of being closed by the Defendants' Orders, Reid has incurred significant monetary losses which exceed \$200,000.

47. Reid opened his establishment under severe restrictions on May 11, 2020 pursuant

to Metro's orders.

48. Upon being open under Metro's restrictions, Reid's establishment is not as profitable as it was prior to.

49. If Reid is not allowed to fully open The Local as a live music venue and bar/restaurant in the near future, it is highly probable that Reid will have to close The Local permanently.

50. The continued enforcement or renewal of Defendants' Orders will cause irreparable harm to the reputation, good will and financial health of Reid's business.

51. The Defendants' Orders have effectively functioned to seize and/or take The Local without any compensation to Reid.

52. Reid has been effectively seized by the State of Tennessee and/or Metro by being Ordered not to travel intrastate unless it is "essential" as defined by the government.

53. Upon being restricted is his travel by Defendants' Orders, Reid was prevented on numerous occasions from driving to the park, a friend's house, a particular store, his own business (which was deemed non-essential), his other businesses (which were deemed non-essential), to a restaurant, bar, movie theater and from just traveling for the sake of traveling.

54. Reid has not been allowed to associate as he normally would as a result of the Defendants' Orders.

55. Reid has not been able to continue to develop his familial, personal and business relationships as a result of Defendants' Orders.

56. Prior to Defendants' Orders, Reid routinely visited and socialized with family, friends and business associates and thereby developed a network of individuals who supported him and elevated his quality of life.

57. Upon being restricted in travel and socializing by Defendants' Orders, Reid was unable to maintain or continue to develop his familial, personal and business relationships as face to face meetings were largely prevented and such had an inherent deleterious effect on his relationships.

58. Under the Defendants' Orders, Reid could not enjoy the full benefit of his familial, personal and business relationships as such individuals were likewise under such Orders.

59. Reid has been unable and will be unable to pursue his chosen occupation of life as a restaurateur and entrepreneur as a result of Defendants' Orders.

60. Reid may be subjected to criminal prosecution as a violation of the Defendants' Orders is a crime and such Orders are unduly vague.

61. Reid has suffered other damages and injuries as a result of the Defendants' Orders.

62. Plaintiff Reid has been targeted by the Metro Health Department even though Reid has taken all reasonable steps to ensure that The Local is operating pursuant to the applicable orders.

63. Reid has received multiple calls from the Metro Health Department regarding "complaints", all of which have been false.

**B. DEPRIVATION OF TIMOTHY STEPHEN SMITH'S FUNDAMENTAL RIGHTS**

64. Plaintiff Timothy Stephen Smith is a long-time resident of Tennessee and has family and associations throughout Tennessee.

65. Smith is the controlling member and public face of five (5) restaurant/bars in and about Broadway: Kid Rock's, Tootsie's Orchid Lounge, Rippy's, Honky Tonk Central and The

Diner.

66. Kid's Rock's is a bar/restaurant and live music venue with approximately 31,567 square feet of space. Tootsie's is a bar and live music venue of approximately 9,018 square feet. Honky Tonk Central is a bar/restaurant and live music venue of approximately 13,428 square feet. The Diner is a restaurant/bar of approximately 22,309 square feet. Rippy's is a bar/restaurant and live music venue with of approximately 10,983 square feet.

67. Smith and his wife purchased Tootsie's Orchid Lounge, which is an internationally recognized, iconic restaurant on Broadway, in 1998. Since that time Smith has invested a considerable and concerted effort in developing his businesses and, in turn, Broadway, which for the last decade has developed into one of the most popular tourist attractions in the United States.

68. Each of these businesses have developed a great reputation for entertainment and good will. This has resulted in his establishments being some of the most popular locations in and about Broadway.

69. Prior to the Defendants' Orders closing his establishment, the businesses were having a record year at his establishments, with revenue up 10% from the previous year.

70. When Smith first learned that Metro intended to fully close these businesses, he was very vocal in his opposition and he was reported in the Tennessean declaring such action was unconstitutional.

71. Ultimately, Smith fully complied with the Orders and immediately closed the businesses and they did not generate revenue between March 16, 2020 through May 11, 2020.

72. While under governmental regulations, delivery and to go orders were allowed, the businesses do not generate significant revenue from pick up or delivery as the businesses

derive most of their revenue from live music events and from consumption of alcohol on premises.

73. Though Smith fully complied with the applicable orders, Smith and/or his agents were very vocal about their opposition to the length of the closures and the restrictive guidelines the government promulgated once his businesses were allowed to open. Multiple contacts were made between Smith and/or his agents and the various governmental officials and it was conveyed multiple times that legal action may be taken if the government continued to disregard Smith's rights and requests.

74. Despite being closed, the businesses continued to pay their employees at a cost of \$500,000 a week as Smith felt a sense of responsibility to the employees.

75. The businesses were required to continue to pay other costs and expenses associated with the businesses, including, paying their rent obligations even though the businesses were not able to generate revenue.

76. Smith and/or the employees did an analysis of whether it would be profitable to open to provide food/alcohol via delivery and he determined given most of his establishments are primarily live music venues with food sales of around 10 to 25% and the fact they do not normally sell a substantial amount of food for take out and delivery, it would not be cost effective to remain open.

77. In Smith's professional opinion he could not open profitably just to serve food/alcohol via delivery or take out.

78. Upon being closed, the businesses had to breach several contracts they had with various vendors.

79. As a result of being forced to close by Defendants, it is estimated that Kid

Rock's has lost revenue in excess of six million dollars (\$6,000,000) and Honky Tonk Central has lost in excess of three million dollars (\$3,000,000).

80. Smith opened the businesses under severe restrictions on May 11, 2020 pursuant to Metro's orders.

81. Given the severe and unnecessary restrictions, the businesses have continued to operate at a loss, with an estimated lost revenue of nearly two million dollars (\$2,000,000) at Kid Rock's in the month of May and June and nearly three million dollars (\$3,000,000) in losses for Honky Tonk Central for the same time period. These significant losses will continue if the businesses are not allowed to fully open.

82. The continued enforcement or renewal of Defendants' Orders will cause irreparable harm to the reputation, good will and financial health of the businesses.

83. It is probable that if the governmental restrictions continue or become more restrictive, one or all of the businesses will have to file bankruptcy.

84. The Defendants' Orders have effectively functioned to seize and/or take the businesses without any compensation.

85. Smith has been effectively seized by the State of Tennessee and/or Metro by being Ordered not to travel intrastate unless it is "essential" as defined by the government.

86. Upon being restricted is his travel by Defendants' Orders, Smith was prevented on numerous occasions from traveling to many locations closed by Defendants' Order, a particular store, visit a friend or business associate, his own businesses (which was deemed non-essential), to a restaurant, bar, and from just traveling for the sake of traveling.

87. Smith has not been allowed to associate with others as a result of the Defendants' Orders.



88. Smith has not been able to continue to develop his familial, personal and business relationships as a result of Defendants' Orders.

89. Prior to Defendants' Orders, Smith routinely visited and socialized with family, friends and business associates and thereby developed a network of individuals who supported him and elevated his quality of life.

90. Upon being restricted in travel and socializing by Defendants' Orders, Smith was unable to maintain or continue to develop his familial, personal and business relationships as face to face meetings were largely prevented and such had an inherent deleterious effect on his relationships.

91. Under the Defendants' Orders Smith could not enjoy the full benefit of his familial, personal and business relationships as such individuals were likewise under such Orders.

92. Smith may be subjected to criminal prosecution as a violation of the Defendants' Orders is a crime and such Orders are unduly vague.

93. Smith has suffered other damages and injuries as a result of the Defendants' Orders.

### **C. TENNESSEE GOVERNOR'S EXECUTIVE ORDERS**

94. On or about January 19, 2019, William B. Lee was sworn in as Governor of Tennessee and pursuant to the Tennessee Constitution took an oath to support the Tennessee Constitution and the United States Constitution. *See* Tennessee Constitution Article X, Section 1.

95. On or about March 12, 2020, the Governor issued Executive Order No. 14, which included a declaration of state of emergency in response to the threat of the spread of the SARS-Coronavirus 2, which causes COVID-19. *See* Exhibit 1 (EO No. 14).

96. Upon issuing such declaration, the Governor erroneously believed such afforded him the authority of all three branches of the government in that he simply had to sign an executive order and thereby usurp citizens' personal and economic rights and liberties without limitations and without checks or balances from other government officials or branches of the government.

97. Plaintiffs and their employees and agents face criminal prosecution if they violate any of the Governor's Executive Orders as pursuant to Tenn. Code Ann. § 58-2-120 a violation of an order or rule promulgated by the Governor during a declared emergency is a Class A misdemeanor, which is punishable by fines and imprisonment of up to 11 months and 29 days.

98. Given the aforementioned statute, the Governor effectively criminalized a citizen or business owner exercising many of their fundamental rights and liberties, such as, the right to travel, the right to choose one's occupation of life, the right to association, the right to assemble, the right to worship and many other fundamental and natural rights citizens of America enjoy.

99. The Governor's approach and manner of issuing executive orders is not supported by the Tennessee Constitution nor the U.S. Constitution, both of which the Governor swore to uphold.

100. On March 22, 2020, the Governor issued Executive Order No. 17. Relying on Tenn. Code Ann. § 58-2-107 and declaring, *inter alia*, the Governor had the right to "make orders concerning the entry and exits and occupancy of premises within an emergency area", the Governor ordered the closure of "restaurants, bars, gyms, fitness centers and other similar facilities." *See* Exhibit 2 (EO No. 17).

101. Executive Order No. 17 was effective at 12:01 a.m. on March 23, 2020 through 12:01 a.m. on April 6, 2020.

102. Executive Order No. 17, prohibited "social gatherings" of ten or more people.

103. Executive Order No. 17 acknowledged indirectly the impact that COVID-19 has on

the older population, but did not mandate the quarantining of any such individuals or the limitation of travel of such segment of the population.

104. Executive Order No. 17 provided no scientific data or reasoning for the severity of restrictions on citizens and businesses and merely alluded to the fact that the Center for Disease Control and Prevention (“CDC”) has stated that COVID-19 is frequently spread “between people who are in close contact with one another (within about 6 feet).”

105. The Governor’s representation of the CDC’s statement in EO No. 17 and other executive orders was a misstatement of the CDC’s position on social distancing, which was as follows: “COVID-19 spreads mainly among people who are in close contact (within about 6 feet) **for a prolonged period.**”(emphasis added).

106. On March 30, 2020, the Governor issued Executive Order No. 22. Therein, relying on Tenn. Code Ann. § 58-2-107(e), *inter alia*, the Governor issued a recommendation that Tennesseans stay at home “as much as possible”, unless engaging in “Essential Activity” or “Essential Services”. *See* Exhibit 3 (EO No. 22).

107. Executive Order No. 22 was effective at 11:59 p.m. on March 31, 2020 through 11:59 pm on April 14, 2020.

108. Executive Order No. 22 vaguely defined “Essential Activity” and “Essential Services” with no rational basis to the goal of reducing the ultimate amount of sickness and death caused by COVID-19.

109. The Governor attempted to explain and define “Essential Services” in several paragraphs in his Executive Order and in an attachment, which was six (6) pages long.

110. The explanation of “Essential Services” was vague and would not give notice to an ordinary person whether his or her activity was in violation of the Executive Order.

111. Further, the explanation of “Essential Service” was inconsistent and illogical as such excluded gatherings of more than ten (10) people, but without limitations defined the following as “Essential Services”: farm and produce stands, government services, newspapers, radio, educational institutions, bicycle shops, liquor stores, painting services, dry cleaners and marinas.

112. Executive Order No. 22 additionally mandated that “non-essential businesses” cannot be open to the public.

113. The definition and explanation of “non-essential businesses” was vague and had no rational basis to reducing the ultimate sickness and death caused by COVID-19.

114. In Executive Order No. 22, the Governor additionally cited as part of his reasoning: the “burden on health care resources”.

115. At the time the Governor issued EO No. 22, there were no reliable projections that the healthcare system would be burdened if the Governor did not invoke extreme measures in restricting individuals and businesses.

116. Upon information and belief, the Governor was relying on statistics which erroneously projected that 20% to 30% of individuals who contracted COVID-19 would need to be hospitalized.

117. On March 31, 2020 the date of Executive Order No. 22 was issued, the Tennessee Department of Health reported that there were 2,239 confirmed cases of COVID-19 and only 175 individuals required hospitalization, which is a 7.8% hospitalization rate.

118. Upon information and belief, the Governor and the Tennessee Department of Health were aware that scientists were estimating that the number of individuals infected was 50% to 80% higher than the reported cases, which would reduce the actual hospitalization rate to 4.3% on March 31, 2020.

119. Government officials made efforts to establish a temporary medical facility at the Music City Center in Nashville, Tennessee which consisted of nearly 1,400 hospital beds, but recently announced such beds were never needed and indicated the temporary facility has been disassembled.

120. The most recent data provide by the Tennessee Health Department states that there have been 14,096 confirmed COVID-19 cases and 1,266 hospitalizations. This yields a hospitalization rate of 8.9%.

121. Given the lack of testing and other relevant factors, the actual hospitalization rate could be as low as 4.9%.

122. If the Defendants quarantined the elderly or the infirmed who are more susceptible to the effects of COVID-19, such would severely limit the strain on the hospitals as the CDC has reported, on average, patients older the age of 50 make up 75% of patients hospitalized as a result of COVID-19.

123. At the time of issuing the Executive Order No. 22, the data and science were available regarding the effects of COVID-19 and such demonstrated that over 93% of individuals who died from COVID-19 were over the age of 60 and/or had a serious underlying medical condition.

124. Executive Order No. 22 did not address any specific restrictions on those who were over the age of 60 or had certain underlying medical conditions.

125. Despite the unprecedented breadth and reach of EO No. 22 and the deadly characteristic of COVID-19, the Executive Order failed to mandate the quarantining or even the self-isolation of individuals who had been diagnosed with COVID-19.

126. Executive Order No. 22 did not mandate the reporting or testing of individuals with symptoms indicating they were infected with COVID-19.

127. Executive Order No. 22 did not mandate guidelines for continuing disinfection or terminal disinfection.

128. Executive Order No. 22 did state, “because protecting personal liberty is deeply important, this Order is not a shelter-in-place mandate . . .”

129. On March 30, 2020, the Governor signed Executive Order No. 23, which mandated, “all persons in Tennessee are required to stay at home, except when engaging in Essential Activity or Essential Services as defined in the Order.” *See* Exhibit 4 (EO No. 23).

130. When announcing the unprecedented lock down of American citizens in their homes, the Governor referred to cell phone and traffic data which he claimed demonstrated an increase in traffic since issuing Executive Order No. 22.

131. In making his statements, the Governor did not cite to any evidence which demonstrated that those traveling on the interstate were not in compliance with his previous Orders and indeed Governor Lee reportedly stated about the increase in traffic, “It’s hard to know why that has happened. We just know that it has.”

132. Upon information and belief, the Governor issued EO No. 23 without any scientific evidence or reasoning related to reducing the ultimate sickness and death caused by COVID-19 and/or such measure were not in the least restrictive means possible.

133. On April 28, 2020, the Governor issued Executive Order No. 30 which was to be effective at 12:01 a.m., April 29, 2020 through 11:59 p.m. on May 29, 2020. *See* Exhibit 5 (EO No. 30).

134. Executive Order No. 30 specifically superseded and repealed EO No’s 17, 21, 22, 23,

27 and 29, which included lifting the “stay-at-home” mandate.<sup>1</sup>

135. Executive Order No. 30 directed that restaurants, including those designated under state law as “limited service restaurants”, were allowed to provide dine-in services, provided they follow the “ERG Guidelines” for restaurants.<sup>2</sup>

136. Executive No. 30 continued to prevent “social or recreational gatherings of ten (10) or more people”.

137. Executive Order No. 30 asserted that “the threat of COVID-19 remains very serious”.

138. For the first time in any order issued by the Governor, persons who tested positive for COVID-19 were directed to “stay home, except to receive medical care.”

139. Executive Order No. 30 provided no reporting, testing or disinfection requirements of individuals who tested positive for COVID-19 or any other mechanism to monitor such individuals.

140. For the first time since issuing a declaration of emergency, the Governor ordered in EO No. 30 that individuals “shall not visit nursing homes, retirement homes, long-term care facilities, or assisted living residents . . .”

141. For the first time since issuing a declaration of emergency, the Governor in EO No. 30 “urged” persons to wear cloth face covering or similar coverings in public settings.

142. The re-opening of restaurants pursuant to EO No. 30 only applied to 89 counties and did not apply to the following counties: Davidson, Hamilton, Knox, Madison, Shelby, and Sullivan.

143. Executive Order No. 30 cited to the fact that the aforementioned counties had “locally

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<sup>1</sup> On April 24, 2020, the Governor issued Executive Order No. 29 titled: An Order Amending Executive Order No. 17 to Reopen Dine In Restaurant. Similar to EO No. 30 it addressed re-opening restaurants for dine-in only in eighty-nine (89) counties. This EO was explicitly superseded and repealed by EO No. 30.

<sup>2</sup> On May 7, 2020, the Governor issued Executive Order No. 35, which allowed “Non-contact Recreation Businesses” to open, but still mandated that bars, night clubs and live performance venues remain closed.

run county health departments”.

144. Executive Order No. 30 stated that the directives related to dental or medical procedures could not be superseded by a local order “absent authority delegated by the Governor.”

145. The Governor’s disparate treatment of individuals and businesses in larger counties is not consistent with the scientific data which demonstrates that those in smaller counties are at greater risk to the effect of COVID-19 as medical treatment is not as readily available.

146. The Governor’s disparate treatment of individuals and businesses in larger counties is illogical and unscientific as nothing within EO No. 30 prevents citizens of the excluded counties from patronizing restaurants in the other 89 counties.

147. The Governor’s disparate treatment of individuals and businesses in larger counties is not supported by the scientific data as the larger counties have similar death rates as other counties.

148. The percentage of the population who have died from COVID-19 for Davidson County and contiguous counties is as follows: Davidson: .0042%; Rutherford: .0035%; Sumner: .0212%; Wilson: .0037%; Williamson: .0037%.

149. The Governor’s disparate treatment of individuals and businesses in larger counties is not supported by the scientific data provided by Vanderbilt University Medical Center which found that all 95 counties of Tennessee had a transmission rate of 1.0, which is the average number of individuals to whom an infected individual would transmit the disease.

150. While the Governor via EO No. 30 has repealed previous executive orders which included certain terms and conditions which were in deprivation of Plaintiffs’ fundamental rights and civil liberties, there is a reasonable expectation that Plaintiffs may face the same deprivation of



fundamental rights and civil liberties in the future.<sup>3</sup>

151. The Governor has asserted publicly his actions were “constitutional” and, thus, it is unlikely the Governor will allow the applicable constitutions or the law to prevent a future reinstatement of his unconstitutional orders.

152. The Governor has asserted that COVID-19 is still a “serious condition”.

153. The Governor has asserted that the “stay at home” mandate and the closure of business was intended to “flatten the curve”, which references the rate of increase in the number of cases.

154. The scientific community and government officials agree that by lifting some of the restrictions found in the Governor’s previous Orders, a high probability exists that the number of cases will increase.

155. There is a reasonable expectation that the Governor will determine there is a need for a second effort to “flatten the curve” pursuant to strict, unconstitutional mandates.

156. The Governor’s executive orders by law expire in sixty (60) days unless otherwise indicated or extended. *See* Tenn. Code Ann. § 58-2-107(b)(2).

157. As the legal challenges to the Governor’s Executive Orders will take longer than sixty (60) days, Plaintiffs have the right to have the issues set forth herein adjudicated by this Court notwithstanding such Orders may expire.

#### **D. METROPOLITAN NASHVILLE-DAVIDSON COUNTY’S ORDERS**

158. On March 15, 2020, the Metropolitan Board of Health issued a Declaration of Emergency based on the threat of COVID-19. *See* Exhibit 8 (Metro Board of Health Order, March

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<sup>3</sup> Governor Lee issued Executive Order 35 and 38, which effectively extended the restrictions on “limited service

15, 2020).

159. The Declaration relied on the Board's authority, *inter alia*, to investigate and control communicable diseases as granted by the Metropolitan Charter in Article 10, Chapter 1, Section 10.103.

160. The Declaration also relied on Tenn. Code Ann § 68-2-609 and stated the Board has authority to order "closure of any public establishment, facility or building, if the public health officer is otherwise authorized by law to take that action."

161. The Declaration does not cite to the law which authorizes the Metro Board of Health to close certain types of businesses on a wholesale basis as such law does not exist.

162. The Declaration states prior to issuing its orders, the Board consulted with Governor William B. Lee and Mayor John Cooper.

163. The Declaration addresses individuals who have traveled to areas flagged by the CDC or those who have been in close contact with such individuals and states if they display symptoms they should "self-isolate". The Declaration takes no steps to direct the quarantining or monitoring of such individuals.

164. The Declaration does not mandate the quarantining of those who may be infected or the testing of those who may suspect they are infected.

165. The Declaration only reminds health care professionals that they are to report suspected cases of COVID-19, but does not direct that such infected individuals must be quarantined or otherwise monitored.

166. The Declaration does not explicitly require the implementation of the disease control

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restaurants" until June 30, 2020. *See* Exhibit 6 (EO No. 35) and Exhibit 7 (EO No. 38).

ordinances or the procedures and protocols found in the Rules of the Tennessee Department of Health or similar procedures and protocols.

167. Instead of using quarantine, reporting or monitoring as a tool, the Board instead directed the Chief Medical Director to effectively close all bars and compel restaurants to reduce their capacity to fifty (50%) percent.

168. On March 18, 2020, Mayor John Cooper issued Executive Order No. 006, titled Declaration of a State of Emergency Related to the COVID-19 Epidemic, citing Tenn. Code Ann. §§ 58-8-104 & 105 and 58-2-110.<sup>4</sup> *See* Exhibit 9 (Executive Order No. 006).

169. The Mayor's Declaration of Emergency states in pertinent part, "The Metropolitan Chief Medical Officer and Chair of the Metropolitan Board of Health are directed to confer regularly with the Mayor regarding the likelihood that public protection from COVID-19 epidemic may require curfew, shelter-in-place order, or other restrictions on travel within Davidson County."

170. None of the Tennessee statutes upon which the Mayor relied in his Declaration afford him the authority to issue "shelter-in-place" orders or restrict travel, except the authority to evacuate a particular area.

171. Upon information and belief, each of the orders issued by the Chief Medical Director of Health for Metropolitan Nashville-Davidson County, Michael C. Caldwell, were at the direction of or with the explicit approval of Defendant Mayor John Cooper.

172. In response to the Board's Declaration of Emergency, on March 17, 2020, the Chief Medical Director issued Health Director Order 1: Suspending Bars and Limiting Restaurant

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<sup>4</sup> Pursuant to Tenn. Code Ann. § 58-2-110(3)(A)(v), an emergency declaration is only valid for seven (7) days, but may be extended. Pursuant to Executive Orders 006A-F, the Mayor extended the Declaration of State of Emergency through seven (7) days from April 29, 2020.

Capacity. *See* Exhibit 10 (HDO 1).

173. Health Director Order 1 did not cite any authority or scientific data or reasoning, but directed that those business which primarily serve alcohol must close.

174. Health Director Order 1 directed restaurants to limit capacity to one half and to space tables and seating to maximize distance between patrons.

175. Health Director Order 1 mandated that restaurants were required to limit the “bar area” to ten percent and prohibited standing.

176. The directives in Health Director Order 1 were unduly vague as an ordinary person could not discern whether he or she was in compliance with the order.

177. On or about March 20, 2020, the Chief Medical Officer issued Health Director Order 1A: Suspending Restaurant Dining Rooms. *See* Exhibit 11 (HDO 1A).

178. Health Director Order 1A effectively prohibited restaurants from serving patrons on premises and limited sales to carry out or delivery.

179. The discrimination against bars and restaurants found in Health Director Orders 1 and 1A had no rational basis to the goal of ultimately reducing the ultimate sickness or death caused by COVID-19.

180. Health Director Orders 1 and 1A did not provide any direction or mandate related to identifying or quarantining those infected with COVID-19 or protecting the vulnerable segments of the city’s population.

181. On March 23, 2020, the Chief Medical Director issued Health Director Order 3: Safer at Home. Such “urged” citizens to “shelter at home as much as possible” and directed that citizens should remain six feet apart from one another. *See* Exhibit 12 (HDO 3).

182. While Health Director Order 3 uses the word “urge”, Metro intended that such

shelter-in-place order be mandatory.

183. On Metro’s website, it states, “To combat the spread of COVID-19, the Metro Public Health Department has issued a Safer at Home Order directing all residents of Nashville and Davidson County to stay inside their homes unless they are engaged in certain ‘essential activities.’”

184. Health Director Order 3 prohibited gatherings of more than ten (10) people.

185. Health Director Order 3 closed all businesses not performing “essential services”. The closure included a list of businesses, including, entertainment venues and public social clubs.

186. Health Director Order 3 listed business which provided “essential services”, which without limitation, included all federal, state and local agencies and individuals performing under contracts with federal, state and local agencies.

187. The description and distinction of “essential business” and “non-essential businesses” in Health Director Order 3 has no rational basis to the goal of reducing the ultimate sickness and death caused by COVID-19.

188. The description of “essential business” and “non-essential business” found in Health Director Order 3 was unduly vague as an ordinary person could not discern whether he or she was in compliance with the order.

189. On April 1, 2020, the Chief Medical Director of Health issued Health Director Order 3: Safer at Home (Amended and Restated). Such Order was similar to the previous Order, with minor changes. *See* Exhibit 13 (HDO 3: Amended).

190. On April 30, 2020, the Chief Medical Director extended Health Director Order 3 until May 8, 2020.

191. On May 8, 2020, Chief Medical Director issued Health Director Order 5: Phase One-Re-Opening, which was to be effective from 12:01 a.m. on May 11, 2020 through 11:59 p.m. on

May 31, 2020. *See* Exhibit 14 (HDO 5).

192. Health Director Order 5, *inter alia*, allowed restaurant and bars to open at 50% capacity with social distancing and the implementation of other CDC guidelines.

193. Health Director Order 5 allowed the service of alcohol at tables, but required all bar areas to remain closed.

194. Health Director Order 5 prohibited live music without a rational basis as musicians are routinely up on a stage or in an area away from the public.

195. The prohibition on live music is further without a rational basis as the presence of musicians playing live music in no way affects the 50% occupancy requirements or the other safety precautions promulgated by the Chief Medical Director.

196. Health Director Order 5 allowed, without limitations, the following entities or establishments to remain open: federal and state offices, farmers markets, real property services, landscaping, bicycle repair, beverage stores, media, construction, architectural and surveying services.

197. On May 22, 2020, Director Caldwell issued Health Director Order 6: Phase Two-Reopening.

198. Order 6 allowed restaurant and bars to operate at 75% capacity with similar restriction to Order 5. *See* Exhibit 15 (HDO 6).

199. Order 6 allowed live music, with the limitation of only two musicians on stage and patrons had to be seated while listening to the music.

200. On May 29, 2020, Director Caldwell issued Health Director Order 6A, which allowed full bands on stage with certain restrictions. *See* Exhibit 16 (HDO 6A).

201. On June 12, 2020, Director Caldwell issued Health Director Order 6B, which

extended Order 6 and 6A until June 30, 2020.

202. On June 24, 2020, Director Caldwell issued Health Director Order 7, which allowed restaurant and bars to open the bar areas at 50%. *See* Exhibit 17 (HDO 7).

203. Additionally, the number of people who could gather together went from twenty-five (25) to two hundred and fifty (250).

204. Despite the Chief Medical Director's heavy focus on restricting activity in bars and restaurant, his Orders made no attempt to compel reporting, disinfection or quarantining consistent with the communicable disease laws and regulations.

205. Despite the undisputed scientific data that COVID-19 primarily affects those over the age of 50 or with weaken immune systems, none of the Health Director Orders restrict the activity of these vulnerable segments of the population.

206. Health Director Order 5, 6 & 7 acknowledges that those age 65 or older are at "high-risk", but only "urges" them to shelter at home.

207. Metro has issued guidelines to reopening business in Nashville which is based on four phases. Each of the phases must meet specific fourteen-day trends.

208. Metro's guidelines state clearly that while Nashville is re-opening businesses, if the rate of infection or number of infections increases, returning to previous stages may be required.

209. Metro has asserted each of its orders are constitutional and lawful.

210. Notwithstanding the Health Director Order 3 as amended expired on May 8, 2020, a reasonable expectation exists that Plaintiff will be subjected to the same deprivation of his rights and liberties by Metro with the same or similar directives.

211. Metro has erroneously taken the position that its Orders can be for unlimited periods of time, but seems to be limiting such Orders to thirty (30) days.

212. As the legal challenges to such orders will take longer than thirty (30) days, Plaintiffs have the right to have the issues set forth herein adjudicated by this Court notwithstanding such Orders may expire or have expired.

**E. COMMUNICABLE DISEASE LAWS AND REGULATIONS**

213. The Tennessee General Assembly, the Tennessee Department of Health and Metro Council have passed comprehensive and effective laws and measures to deal with infectious, communicable diseases.

214. The extraordinary restraint on individuals' freedom and liberties promulgated by the government as set forth herein is not the least restrictive means possible as Defendants have failed to fully employ the detailed, scientific methods set forth in disease control laws and regulations and/or failed to use fully the lawful authority to restrain or monitor those who have been infected with COVID-19 or who are more susceptible to COVID-19.

215. The Tennessee General Assembly beginning in 1905 passed legislation to address the prevention of communicable diseases. The current form of such laws can be found at Tenn. Code Ann. § 68-5-101 et seq..

216. Tennessee law requires that whenever “any case of communicable disease exists . . . or is even suspected to exist in any household, it is the duty of the head of the household, or any other person in the household possessing knowledge of the facts, immediately to notify the municipal or county health authorities . . .” *See* Tenn. Code Ann. § 68-5-101.

217. Notwithstanding the aforementioned statute, none of the Defendants took any public measures or issued any public directives to enforce this crucial aspect of disease control.

218. Tennessee law provides that upon being provided notice of a communicable disease, “it is the duty of all municipal or county health authorities, without delay . . . to proceed to carry out



such rules and regulations as the department of health may prescribe, having for the objection the prevention and restrictions of such diseases.” *See* Tenn. Code Ann. § 68-5-103.

219. Tennessee law further provides, “It is the duty of the local health authorities, on receipt of a report of a case, or suspected case, of disease declared to be communicable . . . to be subject to isolation or quarantine, to confirm or establish the diagnosis, to determine the source or cause of the disease and to take such steps as may be necessary to isolate or quarantine the case or premise upon which the case, cause or source may be found, as may be required by the rules and regulations of the state department of health.” *See* Tenn. Code Ann. § 68-5-104(a)(1).

220. Under Tennessee law it is a Class B misdemeanor for any person who is isolated or quarantined in accordance with the law or regulation to willfully escape. *See* Tenn. Code Ann. § 68-5-104(a)(2).

221. Further under Tennessee law, the Commissioner of Health has broad authority to “declare quarantine whenever, in the commissioner’s judgment, the welfare of the public requires it.” *See* Tenn. Code Ann § 68-1-201.

222. The Commissioner of Health also may prescribe rules and regulations as may be deemed proper to prevent the spread of epidemic diseases in the state. *See* Tenn. Code Ann. § 68-1-201(2).

223. Notwithstanding the broad authority given to the Commissioner of Health, Tennessee law is clear that “[w]henver . . . epidemic diseases appear within any locality within the state . . . the commissioner shall prepare and carry into effect such rules and regulations as, in the commissioner’s judgment will, ***with the least inconvenience to commerce and travel***, prevent the spread of the disease.” *See* Tenn. Code Ann. § 68-1-201(1)(emphasis added).

224. Instead of following the law passed by the Tennessee General Assembly and allowing

the Commissioner of Health to use the regulations and rules passed by the Department of Health or make additional rules or regulations which were the least inconvenience to commerce and travel, the Governor elected to operate outside his Constitutional authority and promulgate orders which were not as effective as the aforementioned laws and regulations.

225. Pursuant to Tenn. Code Ann. § 68-1-201(2), the Tennessee Department of Health, beginning in 1974, promulgated rules and regulations to address communicable diseases. Such can be found in the Rules of the Tennessee Department of Health (“TDOH”), Chapter 1200-14-01.

226. The rules, consistent with Tennessee law, require that all healthcare providers and “other persons” knowing or “suspecting” a case of a reportable disease shall report such to the Department of Health. *See* TDOH Rule 1200-14-01.02(1).

227. The rules further require that when an attending physician discovers or “suspects” a case of communicable disease, he is to inform the head of the household and the appropriate healthcare facility and “instruct these person of such isolation of patient and concurrent disinfection as may be necessary to prevent the spread of the disease.” *See* TDOH Rule 1200.04-01.06(1).

228. The aforementioned rule also states unambiguously that the regulation is to be construed that a physician or other persons duly authorized under applicable state law “has the authority to establish quarantine, or isolation” for communicable diseases. *See* TDOH Rule 1200.04-01.06(1).

229. “Isolation” is defined as “The separation for the period of communicability of infected person, or persons reasonably suspected to be infected, from other persons . . . as will prevent the direct or indirect conveyance of the infectious agent from infected persons to other persons . . .” (emphasis added). *See* TDOH Rule 1200-14-01.01(1)(s).

230. “Quarantine” is defined as “Limitation of freedom of movement or isolation of a

person or preventing or restricting access to premises upon which the person . . . may be found . . . . These limitation may be accomplished by placing a person in a healthcare facility or a supervised living situation, by restricting a person to the persons' home . . ." *See* TDOH Rule 1200-14-01.01(1)(w).

231. The rules, under title "General Measures for the Effective Control of Reportable Diseases", provide that when a local health officer receives a report of a "reportable disease or of a suspected epidemic of a disease or of a suspected case of a disease of public health significance", he or she "shall" confer with the medical personnel making the report. *See* TDOH Rule 1200-14-01.15(1)(a).

232. The local health officer also "shall" collect specimens to confirm diagnosis "or find the source of the infection or epidemic." *See* TDOH Rule 1200-14-01.15(1)(b).

233. The local health officer also "shall" obtain all names and information necessary to identify and "contact all persons potentially exposed to the source of the disease outbreak as needed to protect the public health". *See* TDOH Rule 1200-14-01.15(1)(c).

234. The local health officer further shall "[m]ake a complete epidemiological investigation to include a review of records of the affected person, interview the affected person" and record the finding on a communicable field record. *See* TDOH Rule 1200-14-01.15(1)(d)

235. The local health officer also "shall" establish appropriate control measures which may include "isolation", "quarantine", and "disease surveillance". *See* TDOH Rule 1200-14-01.15(1)(e).

236. The rules further provide that it "shall be the duty of the local health officer, prior to the release from official isolation or quarantine of any case of communicable disease to have instituted such terminal disinfection and cleansing measures as he may deem necessary". *See* Rule 1200-14-01.21.

237. Pursuant to and similar to Tennessee state law, Metro's Code of Ordinances provides specific methods and authority to the chief medical director and the Metro Department of Health to handle deadly, communicable diseases. The ordinances related to disease control can be found at Metro Code of Ordinances, Chapter 10.16 et seq..

238. The Disease Control ordinances specifically classify various contagious, infectious communicable and dangerous disease. These include Malaria, Plague, Typhoid Fever, Yellow Fever, Rheumatic Fever, Influenza and other diseases. *See* Metro Ordinance § 10.16.020(A).

239. Upon a physician or "other person" knowing of such disease such shall be reported to the chief medical director or the department of health. The ordinances likewise place a duty on other entities, including schools, to report such diseases. *See* Metro Ordinance § 10.16.020(B)

240. Upon notification of a communicable disease, the chief medical director is to make contact with the person infected and inquire into the circumstances surrounding the disease. *See* Metro Ordinance § 10.16.030(A)

241. Further, the medical director is to "establish and maintain" quarantine, isolation or use other methods of control of the infected individual. *See* Metro Ordinance § 10.16.080

242. The aforementioned State and Metro laws, rules and regulations are a clear and precise path to the control of communicable diseases such as COVID-19, which is based on decades of experience, scientific studies and data and proven methods of disease control.

243. Instead of following the scientific methods set forth in the law and regulations which focuses on those who are infected or may be infected, the Defendants effectively employed a method of quarantining large segments of the population who were not infected or who would only be minimally impacted if they were infected.

244. Further, the Defendants failed to enforce the laws and regulations which required the

reporting and investigation of cases of COVID-19 or suspected cases.

245. In fact, many aspects of the Defendants' Order countered the law and the well-established scientific methods set forth in the rules and regulations.

246. On the Tennessee Department of Health's website in the Frequently Asked Questions tab, in response to the question, "Where can I get tested?", the TDOH provides the following answer, "The 'safer at home' order requires all residents of Tennessee to stay at home and limit all activity to essential services only."

247. Without mandating reporting or testing, Defendants were unable to follow the methods and guidelines set forth in the applicable disease control laws and regulations as Defendants could not perform epidemiological investigations and contact interviews.

248. Defendants also failed to follow the scientific methods set forth in the applicable disease control laws and regulations by not mandating those who have COVID-19 or who may suspect they have COVID-19 to remain quarantined or isolated.

249. Defendants' Orders merely suggested those with COVID-19 "self-isolate" and Defendants have not made public any plan or procedure for ensuring those who should be quarantined or isolated remained so.

250. Outside those who were hospitalized, Defendants' Orders and directives did not have any public plan or procedure for continuing disinfection or terminal disinfection or other methods to ensure that those who were infected or were suspected of infection were indeed free of the disease and would not spread such to others upon re-entry into the public.

251. Defendants' plan to quarantine each citizen, including those who were not infected or who were not susceptible to the disease, except when performing "essential activity", was not consistent with State or local laws or regulations addressing communicable diseases and, therefore,

was not the least restrictive means possible.

#### **F. METRO'S SUPER SPREADER EVENTS**

252. Mayor John Cooper and/or his surrogates have inundated the public via social media, television, radio, written media and other avenues with reminders, science and data regarding the spread and dangers of COVID-19.

253. Multiple times a week, Mayor John Cooper and the Metro Health Department have a press conference in which they update the public on the developments with COVID-19.

254. Each one of these press conferences contain numerous admonitions from Mayor Cooper, Director Caldwell or other agents of the Metro regarding staying at home, maintaining social distancing, wearing masks, washing hands and taking all reasonable measure to prevent the spread of COVID-19.

255. Each day Mayor John Cooper and Metro Public Health Department also issue an “announcement” on the Metro website regarding “Metro’s citywide coronavirus disease monitoring and response efforts . . .”

256. On May 29, 2020, Metro issued its daily announcement and stated, “Health officials remind everyone to take steps to stop the spread of germs like COVID-19. These include: Practice social distancing as defined by the CDC. Do not gather in groups larger than 25. Wear a cloth face covering when in a community setting, especially in situations where you may be near people. *These face coverings are not a substitute for social distancing.*” See Exhibit 18 (Daily Metro COVID19 Press Update for May 29)(emphasis added).

257. The day after the above referenced announcement, Mayor Cooper issued the following statement on his Twitter account, “I urge all of you to join me from 3:00 to 5:00 pm today at Legislative Plaza for the ‘I will Breathe’ rally . . . This is an especially critical time for all of us,

as Metro’s leaders, to show up and listen to Black voices . . .” *See* Exhibit 19 (Mayor John Cooper’s May 30, 2020 Post).

258. At approximately 3:00 pm, Mayor Cooper presented at the rally. *See* Exhibit 20 (Photos of May 30, 2020 rally). The Mayor’s office estimated that 5,000 people attended the rally. *See* Exhibit 21 (Mayor Cooper’s Executive Order 009, May 30, 2020).

259. During the course of the rally, Mayor Cooper spoke. Notwithstanding that the individuals attending the rally were clearly in violation of the Health Director Orders as social distancing was not possible and the gathering of people was greater than twenty-five (25), Mayor Cooper did not admonish the crowd or even remind them of the applicable health orders. *See* video of Mayor Cooper’s speech, <https://www.youtube.com/watch?v=KkueK4GqUi8> 8:12 – 9:08.

260. During his speech, Mayor Cooper did state he supported, “Equal justice under the law for everyone.”

261. The media nor Metro has reported that any citations were issued to any of the protestors related to violations of the Health Director Orders and upon information and belief, no citations were issued to any protestors.

262. Later in the evening of May 30, 2020, a crowd much greater than twenty-five (25) people gathered at the historic Metro Court house. Countless police were present, and no effort was made by the police to disburse the crowd or enforce the Health Director’s Orders. *See* video from Channel 4 News, <https://www.youtube.com/watch?v=4kq-NkKvXjw> 1:20:42-2:46:00

263. Once the crowd turned violent and began vandalizing the city, Mayor Cooper finally took action and issued an Emergency Order promulgating a 10 p.m. curfew. *See* Exhibit 21. (Mayor Cooper’s May 30, 2020 Emergency Order).

264. Further, Mayor Cooper requested Governor Lee to call in the National Guard, which

he did. *See* Exhibit 22, (Tennessean article, May 30, 2020).

265. Notwithstanding the protests and the subsequent riots were in clear violation of the Governor's executive orders, the news media nor the State of Tennessee reported that any effort was made to enforce the health orders or issue citations or arrest for violations of the orders.

266. Since the protest and riot on May 30, 2020, there have been subsequent marches and assemblies, which tens of thousands of people have attended with impunity. Each one of these protests, rallies, and marches were affiliated with Black Lives Matter or a similar group or individuals who were advocating for equity for black citizens.

267. On June 4, 2020 a peaceful march was organized and attended by "tens of thousands" of people. They followed a mile-long march through Nashville. During the course of the march they were monitored or encountered by numerous law enforcement officers. The march lasted for nearly five (5) hours. *See* Exhibit 23 (Tennessean article, June 5, 2020).

268. On June 6, 2020, a march for justice was organized and a "few thousand" protestors participated. The march began at 2 p.m. and proceeded across the John Seigenthaler Pedestrian Bridge and continued through downtown Nashville, including stopping at the Central Police Precinct, where police in riot gear were present. The march ended at Nissan Stadium at about 4:45 p.m.. *See* Exhibit 24 (Tennessean article, June 6, 2020). *See* Exhibit 25 (Pictures of June 6<sup>th</sup>, 2020 march).

269. Since June 6, 2020, Mayor Cooper and Governor Lee have allowed additional marches, sit-ins and large assemblies in Nashville, which thousands of people have attended. *See* Exhibit 26. (Tennessean article, June 13, 2020).

270. Notwithstanding the government's adamant position beginning March 17, 2020 that people should remain home unless it is essential and the very strict orders issued by both the



Governor and Mayor Cooper, the news media has not reported nor has any government entity reported that any citation has been issued to any participate of any of the protests, rallies, marches or riots.

271. In fact, there has been no report that any of the various governmental agencies have taken any measures to discourage large crowds of people from assembling.

272. At Metro's June 1, 2020 press conference, which was the Monday after Mayor Cooper's protest attended by 5,000 people, the Mayor stated, "All Nashvillians who are maintaining healthy habits to protect yourself and others please keep up good work. Every time you wash your hands, wear your mask in public or practice social distancing, you make a difference and could be saving a life, perhaps even your own." See <https://www.youtube.com/watch?v=jm8XpbPfXS8>, 00:57 – 7:38.

273. The Mayor also addressed the fact he had "allowed" two more musicians to be able to perform in restaurant and bars, with proper health care measures in place. *Id.*

274. The Mayor did not address, however, the assembly of the 5,000 people in Nashville, though he did address the vandalism which occurred after the rally. *Id.*

275. During the same press conference, Dr. Alex Jahangir, the Chairman of the Metro Board of Health, made preliminary statements. While he urged everyone to stay at home and to use "face coverings" when in public, he did not address the 5,000-person rally. See *Id.* at 7:09 – 11:04.

276. Dr. Jahangir was asked by a reporter whether individuals who attended the rally should be tested. Amazingly, Dr. Jahangir did not take the opportunity to discourage large gatherings of citizens, but in fact attempted to defend said event by pointing out that "a majority" of the protestors were wearing masks and they were outside. Additionally, inexplicably Dr. Jahangir did not encourage people to be tested just because they attended the rally. *Id.* at 20:36 – 23:11.

277. On June 8, 2020, Metro held its first press conference after the large rallies on June 4<sup>th</sup> and 6<sup>th</sup>. Instead of discouraging large assemblies of people, the Mayor actually thanked the protestors. He stated, “I am grateful to all Nashvillians who continue to take steps to protect their health and keep others safe, including those who participated in peaceful, outdoor demonstrations while wearing face masks to denounce systemic racial bias over the weekend.” *See* <https://www.youtube.com/watch?v=E5CCwppcwPw>, 1:01 – 10:01.

278. The Mayor also recommended, but did not make it mandatory, that if an individual had the symptoms of COVID-19, he or she should be tested. *Id.*

279. Dr. Jahangir also spoke at the press conference and did not admonish the large gatherings which had occurred. *See Id.* at 10:09 – 14:07.

280. During the “Q&A” session, a reporter asked whether given the nice weather and the fact the headlines had changed, did Metro have a message to the public regarding COVID-19. Dr. Jahangir responded, “This is not over. Take it seriously.” Inexplicably, Dr. Jahangir did not take the opportunity to discourage large gatherings of individuals. *See Id.* at 19:14 – 20:06.

281. One statistic Metro officials repeat time and time again to highlight the dangers of COVID-19 is that a “single infected person circulating freely could infect more than 4,000 people over the course of a month. *See* Exhibit 27 (Roadmap for Reopening Nashville), p. 1. *See also* Exhibit 15 ( Health Director Order 6).

282. If the estimates of the numbers of people who have attended the marches and protests from March 30<sup>th</sup> through June 6, 2020 are accurate, nearly 20,000 people have violated the government health orders by not abiding by social distancing and gathering in groups larger than 25 people. If only 10% of those people became infected as a result of the protests, which would be 2,000, according to Metro’s “science”, in one month, 8 million people could be infected. Of course,

as the percentage increases the potential number grows exponentially, 20% - 16 million, 30% 24 million, etc..

283. Notably, the population of Tennessee is 6.8 million people. *See* <https://www.census.gov/quickfacts/TN>

284. Given the above hypothetical, notwithstanding the Tennessee and Metro governments have all but destroyed the Tennessee economy in the name of preventing even a small percentage of Tennesseans from becoming infected with COVID-19, they have allowed and even encouraged these protests to occur and thereby conceivably could have caused the entire State to become infected or some large portion thereof.

285. It is clear that either Metro authorities do not believe fully the science which they propagate on a daily basis and/or they are intentionally, irresponsibly and unlawfully treating protestors differently than small business owners and the thousands of employees and families who work for them.

286. Upon information and belief, the small businesses are being treated differently, in part, as they are not part of a voting block which Mayor Cooper and his affiliates need to remain in office.

287. When Mayor Cooper ran for the Mayor of Nashville, he ran as a Democrat. *See* Exhibit 28. (Tennessean Article, September 11, 2019).

288. According to the U.S Census, black citizens comprise approximately 27% of the population in Nashville. *See* <https://www.census.gov/quickfacts/fact/table/nashvilledavidsonbalancetennessee.davidsoncountytennessee/PST045219>

289. Black citizens have become very mobilized and vocal since the death of George

Floyd at the hands of the Minneapolis Police Department on May 25, 2020, participating in protests and riots all across the nation.

290. There have been calls for mayors, police chiefs and other government officials to step down across the nation.

291. Indeed, Mayor Cooper has been criticized for how he has handled the protests and riots and very early on, demands surfaced for Police Chief Anderson to resign. *See* Exhibit 29. (Tennessean article, June 2, 2020).

292. Given these circumstances, it is clear Mayor Cooper is flatly ignoring his own orders and those of his own Health Director, all in the name of political expediency and the sake of retaining political office. This is a pathetic display of political pandering and far worse, such is a complete subjugation of the rule of law and the unconscionable deprivation of the fundamental rights of Plaintiffs and those similarly situated in Nashville.

#### **G. DISPARATE TREATMENT OF RESTAURANT AND BARS**

293. Since the beginning of the COVID-19 crisis, the Defendants, especially Metro Defendants, have without scientific reasoning or logic targeted restaurant and bars, especially live music venues in and about Nashville.

294. Before any other restrictions were implemented in Nashville, the Board of Health, before even addressing those who were of advanced age or had serious medical conditions, inordinately focused on restaurant and bars. The Board's initial emergency declaration only directed the Chief Medical Director to close bars who served less food than alcohol (such establishments technically are referred to as "limited service restaurants" as defined by Tennessee law). *See* Exhibit 8. (Board of Health Emergency Order).

295. Indeed, the Chief Medical Director's first order closed limited service restaurants. *See*

Exhibit 10.

296. Upon information and belief, such unequal treatment of limited service restaurants was not rationally based, but was pursuant to political expediency.

297. The weekend the Board of Health's emergency's meeting, which was held on a Sunday, news reports surfaced displaying hundreds of people patronizing Broadway. For political reasons and/or out of animosity which already existed for business owners on Broadway, the Board acted without good cause in focusing on restaurant and bars. *See Exhibit 30 (Knoxnews.com, March 15, 2020)*

298. From the first Health Director order, restaurant and bars were consistently treated differently than other similarly situated businesses and entities.

299. Business such as grocery stores, gas station stores, all government offices, Wal-mart, Target, Walgreens, Home Depot, liquor stores, hardware stores and other comparable stores and entities were all allowed to remain open without any occupancy restrictions and without being monitored by Metro.

300. At the time of filing this complaint, there has not been any report of a citation which has been issued to any establishment that is either a restaurant or bar.

301. Such disparate treatment of bars and restaurants is arbitrary and without scientific reasoning as no scientific evidence or reports exists which demonstrate that the public is more susceptible to contracting COVID-19 while at a restaurant and bar than the businesses which were allowed to remain open.

302. Further, restaurant and bars are just as essential as grocery stores, liquor stores and "big box" stores as they sell food and alcohol to the public, but only in a different form.

303. Tennessee and Metro authorities have made little or no effort to discourage or

prevent any businesses which are not a restaurant or bar from violating applicable orders issued by the government.

304. Conversely, governmental authorities have taken extraordinary, and in fact, unlawful efforts to harass, intimidate and penalize restaurant and bars in Nashville regarding the applicable orders.

305. Small business owners, especially those with music venues in and about Nashville, have been targeted and suffered disparate treatment at the behest of Mayor Cooper and Director Caldwell. Such mistreatment has taken the form of either slowing the advancement of the re-opening phases and/or specifically targeting restaurant and bars for compliance.

306. Phase One, which only allowed restaurants and bars to open at 50% capacity and did not allow live music or the bar areas to be open, began on Monday, May 11, 2020.

307. Phase One, however, should have begun on May 8<sup>th</sup>, 2020, which was a Friday, as the Mayor announced the metrics were such that re-opening met the guidelines on May 7, 2020. *See* Exhibit 31. (Music Row.com article, May 7, 2020).

308. Opening on May 11<sup>th</sup>, 2020 instead of May 8<sup>th</sup>, 2020 put restaurants and bars at a distinct disadvantage of not having their establishments open over the weekend when business is most profitable.

309. Under Phase One, most restaurants and bars, who were already in a tenuous financial state given such businesses had been closed for nearly eight weeks, struggled as most restaurant and bars in Nashville attract guests with live music and/or make their profits during peak hours when their capacity is nearly 100%.

310. The Re-opening plan issued by Metro indicated that these phases should evolve every fourteen (14) days if the metrics met certain standards and that such phases would evolve based on

“data not dates”. Thus, had Phase One started in May 8, 2020, Phase Two would have begun on May 22<sup>nd</sup>, 2020 which was the Friday of Memorial Day weekend, a historically profitable weekend for the hospitality industry. *See* Exhibit 27 (Roadmap for Reopening Nashville).

311. Phase Two allowed restaurants and bars to operate at 75% capacity and to have live music.

312. On May 21, 2020, Mayor Cooper announced that Phase Two would begin on Monday, May 25, 2020. *See* Exhibit 32 (Tennessean article, May 21, 2020).

313. During the announcement, Dr. Jahangir stated that Metro has had “a flat 14-day ‘rolling’ average of new cases, with the transmission rate below one.” *See Id.*

314. Given the positive metrics, Phase Two could have begun on May 22, 2020.

315. Given Metro’s guidelines, Phase Three should have begun on June 5<sup>th</sup>, 2020, but it did not begin until June 22<sup>nd</sup>, 2020.

316. In contrast to Metro’s stated plan to follow “data not dates”, Metro has already announced that regardless of the metrics, Nashville will be in Phase Three for at least 28 days.

317. This premediated disregard for its own guidelines reveals Metro’s animus toward restaurant and bars in Nashville as under Phase Four, which should have already begun, Metro loses the heavy-handed restriction of restaurant and bars.

318. The animus toward restaurant/bars is further evident in the stark contrast of how Mayor Cooper and Director Caldwell responded to the minor infractions of the restaurant/bars in comparison to their response to the march and rallies, which are essentially super spreader events encouraged both explicitly and implicitly by government officials.

319. At the Monday morning press conference after the government raids of restaurant/bars in and about Broadway on the weekend of June 12-15, 2020, while the

seriousness of COVID-19 was expressed again and again, as were the protocols of social distancing, hand washing and wearing face masks, not once did any of the government officials, including Mayor Cooper or Director Caldwell, admonish those who were participating in the super spreader events in the form of rallies and marches attended by thousands of people. *See* <https://www.youtube.com/watch?v=lchsHOGrf1w>

320. All the comments by Metro officials about responsibility and working together were directed at “businesses” and businesses who were not in compliance were scolded multiple times by both Mayor Cooper and Director Caldwell. No such condemnation was directed at the protestors. *See Id.* at 5:04 – 7:00.

321. In fact, both Mayor Cooper and Dr. Caldwell seem to defend these individuals and embraced a fantastical theory that because the First Amendment affords the right to peacefully assemble, tens of thousands of people marching and protesting closely together for the last two weeks would have no impact on the spread of COVID-19.

322. This bizarre theory manifested itself in the fact that while expressing emphatically the seriousness of COVID-19 and the need for following the health orders, all of the admonitions were directed at businesses and none at protestors.

323. When Mayor Cooper was asked by a reporter if bar owners were the victims of selective enforcement given their obvious disparate treatment, the Mayor side stepped the question and stated, “Everyone needs to wear a mask and observe social distancing. whether outside at a first amendment protected assembly or whether inside at a bar. If you are inside, the risk is greater of course then outside as public health policy would show.” *See Id.* at 36:00.

324. Mayor Cooper’s attempt to provide an excuse for protestors because they purportedly were wearing masks over looks the fact Metro has stated that wearing masks is not a substitute for



social distancing and the fact that none of the severe restrictions on businesses found in the health orders are reduced or eliminated if patrons will simply wear masks and/or are outside.

325. Further, gatherings with more than 25 people are specifically prohibited by Health Director Order No. 6, with the following admonition, “Gatherings include any event or convening that brings together groups of individuals, including . . . sporting events, parades, concerts, festivals . . . and similar activities.” Even though many of these activities can and are conducted outside, the Order does not contain any exception for these outdoor activities if face masks are worn by participants.

326. Mayor Cooper also encouraged people to not patronize businesses which were not complying, but made no mention about not attending marches or rallies which were not in compliance. *See Id.* at 37:50 – 38:05.

327. Director Caldwell responded to the same question and revealed that he espoused the belief that business owners in Nashville were lucky that he allowed them to operate a business. Such an attitude is comparable to the theories of communism and Marxism which plague the citizens of countries such as Russia and China. *See Id.* at 39:20 – 41:39.

328. Director Caldwell stated, “Operating a business in Nashville Davidson County is a privilege, not a right. It’s a constitutional right to have your First Amendment rights to express yourself. . . . I was out there also. They are wearing face coverings. I am working with the Office of Emergency Management to assure they are wearing facial coverings and they are. . . . ***We have had a time of Safer at Home. Then you had the privilege to be open again.*** Please respect that privilege and make sure you follow the guidelines.” *Id.* (emphasis added).

329. Director Caldwell’s comments reveal the precise bias and arrogance of government officials which has resulted in the deprivation of Plaintiffs’ and other restaurant/bar owner’s

fundamental rights. Metro believes and operates on the spurious premise that business owners should be grateful they have been allowed to invest their money and resources and risk opening and operating a business in Nashville and no Constitutional rights are afforded such business owners.

#### **H. DISCRIMINATORY AND RETAILATORY TREATMENT OF SMITH**

330. On May 22, 2020, several bar owners met with Director Caldwell to discuss the guidelines. During the course of the conversation, Director Caldwell was told by Sean Marshall, general counsel for Kid Rock's, that a civil action may be filed. Direct Caldwell responded in a manner similar to the follow: " A lawsuit should not be filed. I and the Health Department will be around for a long time."<sup>5</sup> This was perceived as a veiled threat against any businesses which desired to exercise their constitutional rights to challenge Mayor Cooper's reopening plan. *See Exhibit 33.* (Affidavit of Sean Marshall, Esq.).

331. Director Caldwell specifically targeted restaurants/bars during the Memorial Day weekend.

332. Director Caldwell set up a tent at the end of Broadway and specifically monitored Broadway. *See Exhibit 34* (Fox 17 Nashville article, May 26, 2020).

333. Memorial Day weekend is historically a weekend for home improvement projects and shopping, yet, Director Caldwell did not make any public statements about targeting Home Depot, Lowes, Wal-mart, Target or other similar businesses which are not restaurants or bars.

334. Over the course of the following weekend, as outlined herein, protests and riots rocked Nashville. Mayor Cooper nor Director Caldwell expressed any concerns or sentiments for these blatant violations.

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<sup>5</sup> This is not a verbatim quote, but accurately reflects the overall content and general tone of Caldwell's response.

335. Over the weekend of June 12 -13, 2020, Mayor Cooper and Director Caldwell continued targeting restaurants and bars.

336. On June 12, 2020, Health Department inspectors only visited restaurant and bars and did not visit larger businesses such as Home Depot, Wal-mart or similar larger business. The report of the tickets which were issued did not include such large businesses. *See Exhibit 35*, (Tennessean article, June 15).

337. Violations were only issued to restaurant and bars for violations which were much more innocuous than the crowds of tens of thousands of people who marched or protested shoulder to shoulder over the previous two weeks. By way of example, Scoreboard Bar & Grill was cited for allowing two patrons to eat at the bar and for having pool cues on the pool tables. *See Id.*

338. On June 12, 2020, Health Department inspectors specifically targeted Kid Rock's and Honky Tonk Central and issued each establishment a citation for minor violations. *See Exhibit 36* (Citations to Kid Rock's and Honky Tonk Central).

339. On June 13, 2020, Mayor Cooper deployed inspectors from the Metro Beer Permit Board to target five (5) specific businesses on Broadway.

340. Melvin Brown, a Beer Board Inspector, testified that he was given a spread sheet with the names of five (5) business: Moxie Hotel, Kid Rock's, Nudies, Broad Brew House and Nashville Underground. *See Exhibit 37*. (Audio Recording of Beer Board Meeting, June 18, 2020, 1:59 – 3:46).

341. Melvin Brown inspected Kid Rock's and a citation was served at a later date for serving patrons at the bar. *See Exhibit 38* (Beer Board Citation).

342. Melvin Brown specifically told a manager at the Nashville Underground that he was sent by the Mayor and the Mayor was targeting Plaintiff Smith. *See Exhibit 39*. (Affidavit of Joshua

Pemberton).

343. Indeed, on June 13, 2020, Director Caldwell personally inspected Kid Rock's and did not personally inspect any other locations in Nashville on said date. *See* Exhibit 33. (Affidavit of Sean Marshall, Esq.) [repeat] *See also* Exhibit 40 (Health Department Comment Sheet, June 13, 2020).

344. Upon claiming Kid Rock's was not in compliance with his orders, Director Caldwell demanded that Kid Rock's close down at midnight. As Director Caldwell did not have an enforceable order, Kid Rock's did not close down. *See* Exhibit 41. (Affidavit of James W. Knight, III). *See also* Exhibit 42. (Affidavit of Mark Bryne).

345. Being frustrated that he could not unlawfully shutter Kid Rock's, Director Caldwell threatened to involve the police. *See Id.*

346. Upon further refusal by management to close Kid Rock's, Director Caldwell attempted to recruit police officers to assist in closing Kid Rock's. The officers, however, would not participate in his discriminatory and unlawful activities. *See Id.*

347. Later that evening, two Health Department employees returned, one being Hugh Atkins, Bureau Director of Environmental Health Division. Mr. Atkins advised that he did not have a closure order and that the proper procedure was to issue a citation, which was issued at a later date. *See* Exhibit 38 (Beer Board Citation).

348. The tickets issued to Smith's businesses are the product of selective enforcement as other facilities had similar violations but were given warnings and certainly were not told they would have to close. *See* Exhibit 43 (Health Department Warnings to Legends and Nudies).

349. Upon Mayor Cooper and Director Caldwell being unable to effectively close restaurant/bars in Nashville, they coordinated with the Beer Permit Board to hold an unprecedented,

emergency meeting in attempt to unlawfully suspend the licenses of restaurant/bars which committed minor violations.

350. On June 18, 2020, the Beer Permit Board held an emergency meeting. The members of the board and its staff attended via telephone or via the internet. Because of technical and legal constraints, only four of the seven board members were in attendance: Chairman Brian Taylor, Will Conway, Kia Jarmon and Chris Bellamy.

351. During the course of the meeting, Chairman Taylor stated numerous times that the meeting being held was unprecedented, as was the pandemic. *See Exhibit 37 (Recordation of Beer Board Meeting, June 18, 2020) [repeat].*

352. The topic of the meetings was the complaints against four of the five establishments targeted by Mayor Cooper.<sup>6</sup> The staff recommended and advised that normally a first offense is a fine of \$1,000, but given the unprecedented health crisis, the Board's full powers of civil penalty up to suspension were available. *See Id.* at 20:10 – 20:30.

353. It was also made clear during the discussion that normally when a suspension was issued, the permit holder was afforded the opportunity to pay a fine in lieu of the suspension. *See Id.* at 28:41 – 29:27.

354. After preliminary discussions, Chairman Taylor opened the floor for motions, to include dismissing the complaints. Ms. Jarmon moved to adopt the staff's recommendations. As the staff recommendations did not provide a precise fine, Ms. Jarmon ultimately rescinded her Motion. *See Id.* at 19:25 – 21:14.

355. Ms. Jarmon then brought up two recent cases in which a temporary suspension was

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<sup>6</sup> According to Inspector Melvin Brown, while Nashville Underground was targeted by Mayor Cooper, Inspector

issued for permit holders until public comments could be made. However, it was explained to her that in those cases there had been a history of violations related to the health and safety of the community. Further, legal counsel explained those cases were at the hearing stage as opposed to the complaint stage. *See Id.* at 24:49 – 28:00.

356. Ultimately, Mr. Bellamy made a motion that the four named locations be issued a citation for five (5) day suspension without a civil penalty option given the unprecedented pandemic. Ms. Jarmon seconded the motion. Members Jarmon, Bellamy and Conway voted “Yeah” and the motion passed. Chairman Taylor did not vote. *See Id.* at 34:58 – 36:50.

357. Without Jarmon’s vote, the motion would not have passed.

358. It was evident from the hearing that Jarmon was biased and not being objective toward the four beer permit holders who were the subject of the complaints.

359. Indeed, after news reports of the citations and more than one establishment voiced their objections to the unprecedented action of the Beer Permit Board, Jarmon, who is African-American, posted on social media the following statement, which clearly revealed her bias against the four establishments:

It is WHITE SUPREMACY to say, “we broke the rules but you’ve been too harsh on us.” For hundreds of years, white people have benefited from breaking, bending, and grandfathering rules. . . .As a member of the Beer Permit Board, I wish we’d done more. But I am also mindful that whatever precedent we set will also impact Black business too. For now, take the dang five days. . . .”

*See Exhibit 44.* (Post of Kia Jarmon).

360. Jarmon’s post reveals the precise bias and discriminatory attitude that restaurants/bars of Nashville have faced for either not being a part of a movement which is politically expedient or

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Brown did not find any violations at the Nashville Underground.

for voicing their objections or indicating they will petition the government for redress. Such has resulted in the restaurant/bars of Nashville being held to a different standard and in fact, being retaliated against.

361. On June 22, 2020, via the local news, counsel for Kid Rock's, Bryan Lewis demanded that Mayor Cooper remove Jarmon from the Beer Permit Board. As of the filing of the Complaint, Mayor Cooper has failed to do so and thereby acquiesces in the biased treatment Plaintiffs have received at the hands of Jarmon.

362. Further evidence of Smith being targeted is seen in the fact that on June 17, 2020, Kid Rock's received yet another visit from the Health Department.

363. On this occasion, Health Inspector Chris Alexander claimed that he had received a complaint regarding "trash overflowing on the street". *See* Exhibit 45 (Affidavit of Melissa Sweany).

364. The complaint proved to be unfounded as Kid Rock's does not use Metro's garbage service, but hires a private entity to remove trash from an enclosed garbage room. *See Id.* *See also* Exhibit 46 (Health Department Comment Sheet, June 17, 2020).

### **CAUSES OF ACTION**

#### **COUNT I: 42 U.S.C. § 1983, VIOLATIONS OF THE SUBSTANTIVE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT**

365. Plaintiffs incorporate by reference herein the allegations set forth in the preceding numbered paragraphs and do further allege as follows:

366. 42 U.S.C. § 1983 states in pertinent part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .”

367. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution states: “No state shall . . .deprive any person of life, liberty, or property, without due process of law . . .”.

368. The Ninth Amendment of the U.S. Constitution reads, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

369. Each American citizen enjoys certain inalienable, fundamental rights, both enumerated and unenumerated in the U.S. Constitution, which are “essential to the orderly pursuit of happiness by free men.” *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 (1972)

370. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments, to pursue any common occupation of life, including owning and operating a restaurant and bar, without undue government interference. *See Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

371. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments to travel, both intrastate and interstate, without undue government interference. *See Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002).

372. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments to the freedom of assembly and association, including developing familial relationships and to gather with individuals for business and political purposes, without undue government interference. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).



373. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments to be free from unreasonable seizure by the government. *See Michigan v. Tyler*, 436 U.S. 499, 504–05 (1978).

374. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments to enter into contracts and operate their businesses under such contracts free from undue government interference. *See U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)

375. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments not to be treated differently by government officials because of their race or ethnicity or because of their political views.

376. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments to petition the government or express opposition to the government.

377. Plaintiffs have a fundamental right under the U.S. Constitution and its Amendments to express themselves through music.

378. Plaintiffs have other such fundamental and natural rights which are not enumerated in the U.S. Constitution, but nonetheless are protected under the law, such as certain economic and property rights. *See Ninth Amendment of the U.S. Constitution.*

379. Plaintiffs' fundamental rights and civil liberties under the U.S. Constitution were violated and they were deprived of such rights, immunities and privileges by the orders, actions and/or omissions of the officials and employees of the State of Tennessee and Metro as set forth herein.

380. Defendants' actions were not in the least restrictive means possible.

381. Upon information and belief, in an effort to address the spread of COVID-19, Defendants did not employ the authority and methods afforded under the law to control

communicable disease, including, but not limited to, mandating reporting of individuals who were infected with COVID-19 or suspected they were infected with COVID-19, mandating the quarantining or isolation of those who were infected with COVID-19, enforcing quarantine and isolations orders, conducting interviews of those infected or performing contact tracing and testing to limit the spread of COVID-19.

382. Defendants' Orders and mandates should be declared unconstitutional as science and the law afforded Defendants other reasonable ways to achieve the goal of ultimately limiting the sickness and death caused by COVID-19 which were less burdensome on Plaintiffs' fundamental rights and liberties and which were less drastic. *See Johnson v. City of Cincinnati*, 310 F.3d 484, 503 (6th Cir. 2002).

383. Defendants' actions as set forth herein constitute unlawful retaliation against Plaintiffs for petitioning the government for redress or exercising their First Amendment right to express opposition to government actions or officials.

384. As a direct and proximate result of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered injuries and damages.

385. As a direct and proximate result of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights, privileges and immunities afforded under the law and seek declaratory and injunctive relief to prevent such further deprivation as requested herein and damages pursuant to 42 U.S.C. §§ 1983 and 1985. *See supra*. Count VI & Count VII

**COUNT II: 42 U.S.C. § 1983, VIOLATIONS OF PROCEDURAL DUE PROCESS**  
**CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENTS**

386. Plaintiffs incorporate by reference herein the allegations set forth in the preceding numbered paragraphs and do further allege as follows:

387. The Due Process Clause of the Fifth Amendment states, “No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

388. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution states: “No state shall . . .deprive any person of life, liberty, or property, without due process of law . . .”.

389. Defendants’ Order and actions are in violation of the Due Process Clause of the Fifth Amendment and Fourteenth Amendment.

390. Both the State of Tennessee and Metro deprived Plaintiffs of their fundamental rights and civil liberties as set forth herein without a pre-deprivation or post-deprivation hearing. *See Howard v. Grinage*, 82 F.3d 1343, 1349 (6<sup>th</sup> Cir. 1996).

391. Defendants’ Orders are in violation of the taking clause of the Fifth Amendment as such orders have denied Plaintiff all economically beneficial or productive use of his property and business without just compensation. *See Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015–16 (1992).

392. Defendants’ Orders are in violation of the Due Process Clause of the Fifth and Fourteenth Amendment as such failed to give reasonable notice of criminal offenses in a manner which is not vague. *See Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

393. In addition, or in the alternative, Plaintiffs would aver that Kia Jarmon’s discriminatory and retaliatory conduct as set forth herein is a violation of Plaintiffs’ fundamental rights protected under the U.S. Constitution and is further in violation of the Due Process Clause of

the 14<sup>th</sup> Amendment to the Constitution.

394. In addition, or in the alternative, Plaintiffs would aver that Director Caldwell's discriminatory and retaliatory conduct as set forth herein is a violation of Plaintiffs' fundamental rights protected under the U.S. Constitution and is further in violation of the Due Process Clause of the 14<sup>th</sup> Amendment to the Constitution.

395. As a direct and proximate result of Defendants' actions and/or omissions, Plaintiffs have suffered damage and losses.

396. As a direct and proximate result of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights, privileges and immunities afforded under the law and seek declaratory and injunctive relief to prevent such further deprivation as requested herein and damages pursuant to 42 U.S.C. §§ 1983 and 1985. *See supra.* Count VI & Count VII.

**COUNT III: 42 U.S.C. § 1983, VIOLATIONS OF THE EQUAL PROTECTION CLAUSE  
OF THE FOURTEENTH AMENDMENT**

397. Plaintiffs incorporate by reference herein the allegations set forth in the preceding numbered paragraphs and do further allege as follows:

398. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution protects every citizen against intentional, arbitrary government discrimination, whether based on a policy's express terms or improper implementation by government agents. *See Sioux City Bridge Co. v. Dakota Cty., Neb.*, 260 U.S. 441, 445 (1923)

399. The Defendants' Orders and/or actions deprived Plaintiffs of their fundamental rights as guaranteed under the U.S. Constitution and the amendments thereto.

400. In addition or in the alternative, the Supreme Court has recognized successful equal protection claims brought by a “class of one” even if a plaintiff is not of a protected class in which a plaintiff alleges that the government has intentionally and without rational basis treated him or her differently from others who are similarly situated. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

401. The Defendants’ Orders and/or actions as set forth herein constitute a violation of the Equal Protection Clause as Plaintiffs were treated differently than other businesses and citizens and such was not done in the least restrictive means possible or, in the alternative, such was done without a rational basis.

402. In addition, or in the alternative, Plaintiffs aver that the Defendants’ Orders which allow “essential” businesses to remain open, including all government offices and agencies without limitation, but required Plaintiffs to close their businesses were a violation of the Equal Protection Clause of the U.S. Constitution.

403. In addition, or in the alternative, Plaintiffs would aver that Executive Order No. 30 and subsequent orders are in violation of the Equal Protection Clause as such did not allow Plaintiffs to open their businesses because their businesses are located in Davidson County.

404. In addition, or in the alternative, Plaintiffs aver that Defendants’ Orders which prohibited live music at Plaintiff’s venue is undue discrimination and is in violation of the Equal Protection Clause of the U.S. Constitution.

405. In addition, or in the alternative, Plaintiffs would aver that Metro’s intentional targeting of restaurant and bars and/or selective enforcement of the Defendants’ orders vis-à-vis the thousands of people who have attended protests and marches is unlawful discrimination and is a violation of the Equal Protection Clause of the U.S. Constitution.

406. In addition, or in the alternative, Plaintiffs would aver that Kia Jarmon's discriminatory and retaliatory conduct as set forth herein is a violation of Plaintiffs' fundamental rights protected under the U.S. Constitution and is further in violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment to the Constitution.

407. In addition, or in the alternative, Plaintiffs would aver that Director Caldwell's discriminatory and retaliatory conduct as set forth herein is a violation of Plaintiffs' fundamental rights protected under the U.S. Constitution and is further in violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment to the Constitution.

408. The disparate and the discriminatory treatment of Plaintiffs set forth herein is not in the least restrictive means possible, or, in the alternative, without a rational basis.

409. As a direct and proximate result of Defendants' actions set forth herein Plaintiffs suffered damages and injuries.

410. As a direct and proximate result of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights, privileges and immunities afforded under the law and seek declaratory and injunctive relief to prevent such further deprivation as requested herein and damages pursuant to 42 U.S.C. §§ 1983 and 1985. *See supra*. Count VI & Count VII.

#### **COUNT IV: VIOLATIONS OF THE TENNESSEE CONSTITUTION**

411. Plaintiffs incorporate by reference herein the allegations set forth in the preceding numbered paragraphs and does further allege as follows:

412. Defendants' actions and omissions as set forth herein were in violation of the Tennessee Constitution.

413. Governor Lee's Executive Orders were in violation of his oath of office as required

under the Tennessee Constitution. *See* Tenn. Const. Art. X, § 1, (“Every person who shall be chosen . . . to any office of trust or profit under this Constitution . . . shall, before entering on the duties thereof, take an oath to support the Constitution of this State, and of the United States, and an oath of office.”)

414. Governor Lee’s use of power pursuant to Tenn. Code Ann. § 58-2-107(e) in the form of his Executive Orders challenged herein was unconstitutional as such violates the Separation of Powers Clause of the Tennessee Constitution. *See* Tenn. Const. Art. 2, § 2 (“No person or person belonging to one of these departments shall exercise any of the powers properly belonging to either of the others . . .”)

415. Article 2, Section 1 of the Tennessee Constitution states, “The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.”

416. Article 3, Section 1 of the Tennessee Constitution vests the Supreme Executive Power in “a Governor”.

417. Article 3, Section 10 states, “[The Governor] shall take care that the laws be faithfully executed.”

418. The Governor is not afforded under the Tennessee Constitution the right to create law without the General Assembly passing a bill.

419. The Governor’s only role in creating law in Tennessee is to approve or refuse to sign any bill which passes both Houses of the General Assembly. *See* Article 3, Section 18 of the Tennessee Constitution.

420. Notwithstanding the limits of the Tennessee Constitution, the Governor’s Orders were executed with the intent to function as a law as the Executive Orders rely on Tenn. Code Ann.

§ 58-2-107(e), which states the Governor’s executive orders “have the force of law” when a state of emergency has been declared.

421. The Governor’s Executive Orders specifically assert that the Governor during a state of emergency has authority to “suspend laws and rules” and make orders “concerning entry and exit and the occupancy of premises” and “take measures concerning the conduct of civilians and the calling of public meetings and gatherings”.

422. The Governor’s Executive Orders are an unconstitutional attempt to usurp the General Assembly’s power.

423. The Governor’s Executive Orders unlawfully restricted the travel and business activities of Plaintiffs and other Tennessee citizens.

424. The Governor’s Executive Orders and Metro’s Health Director Orders were in violation of Article I, Section 25 of the Tennessee Constitution, which prohibits Martial Law.

425. Martial law is defined in Article I, Section 25 of the Tennessee Constitution as “unrestricted power of military officers *or others*, to dispose of the persons, liberties or property”. (emphasis added).<sup>7</sup>

426. The Defendants’ Orders are an attempt at wielding unrestricted power as notwithstanding the unprecedented breadth and invasiveness of their Orders, the Defendants have not sought approval or review of their Orders from any other branch of the government.

427. Further, the Defendants’ Orders dispose of Plaintiffs’ civil liberties and property.

428. The Governor’s Executive Orders and Metro’s Health Director Orders were in violation of Article 1, Section 7 of the Tennessee Constitution which prohibits unreasonable

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<sup>7</sup> Article 3, Section 5 of the Tennessee Constitution states the Governor “shall be commander-in-chief of the Army



seizures.

429. The aforementioned orders effectively seized citizens and their businesses as it severely limited their activities and travel and did so unreasonably.

430. The Governor's Executive Orders and Metro's Health Director Orders violated Article I, Section 8 of the Tennessee Constitution as such prohibits depriving a citizen of life, liberty or property without due process.

431. Plaintiffs' fundamental rights and civil liberties were deprived without a pre-deprivation or post-deprivation hearing.

432. The Governor's Executive Orders and Metro's Health Director Orders are in violation of Article 1, Section 20 of the Tennessee Constitution which prohibits any law from impairing obligations of contracts.

433. As a direct result of the aforementioned orders, Plaintiffs were unable to meet their obligations under several contracts.

434. The Governor's Executive Orders and Metro's Health Director Orders are in violation of Article XI, Section 8 of the Tennessee Constitution which affords each citizen equal protection under the law.

435. The very breadth and nature of the aforementioned orders are further in violation of the penumbras and implications of the Tennessee Constitution and the natural rights of the people set forth therein.

436. As a direct and proximate result of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights, privileges and immunities

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and Navy of this State, and of the Militia . . .”

afforded under the law and seek declaratory and injunctive relief to prevent such further deprivation as requested herein. *See supra.* Count VI & Count VII.

### **COUNT V: VIOLATIONS OF TENNESSEE STATUTES**

437. Plaintiffs incorporate by reference herein the allegations set forth in the preceding numbered paragraphs and do further allege as follows:

438. In the alternative, Plaintiffs aver that the Governor's Executive Orders were in violation of Tenn. Code Ann. § 58-2-107(e) as the authority afforded thereunder to the Governor during the state of emergency was limited to state entities and did not extend the authority to restrict all privately owned business and citizens in the State of Tennessee.

439. Plaintiffs further aver that the Governor's Executive Orders exceeded the authority afforded the Governor under Tenn. Code Ann. § 58-2-107(e) as such Orders functioned as martial law.

440. The General Emergency Provision passed by the General Assembly states under the title "Limitations", "Nothing in this chapter shall be construed to: . . . modify . . .the authority of the governor to proclaim martial law or rule or exercise any other powers vested in the governor under the constitution, statutes or common law . . ." *See* Tenn. Code Ann. § 58-2-105(4).

441. The Defendants' Orders violated Tenn. Code Ann. § 68-1-201(1), which requires that quarantining utilized to address an epidemic must be in the form of the least inconvenience to travel and commerce.

442. The Defendants' Orders has resulted in a heavy burden on travel and commerce in that at the time of the filing of this Complaint, the Governor's office estimates that 15% of Tennessee workers have filed for unemployment, retail businesses have lost \$870 million in net sales

and Tennessee GDP has been reduced by \$5 billion dollars.

443. Metro's Orders violate Tenn. Code Ann. § 68-2-608, which provides that an individual affected by an order from the county health director must be served with notice and be given the opportunity to be heard.

444. Metro's Orders violate Tenn. Code Ann. § 68-2-609 as the county health officer only has authority to close a public establishment if the officer finds "unsanitary conditions".

445. Plaintiffs have not been served with any orders from Metro.

446. Plaintiffs have not been afforded the opportunity to be heard regarding the closure of their business.

447. Metro's Orders are in violation of Tenn. Code Ann. § 58-2-107 as the Governor has exclusive executive authority to manage an emergency which reaches beyond the boundaries of a local authority, unless the Governor delegates such authority.

448. Metro's Orders are in violation of Tenn. Code Ann. § 58-2-118(a) as Metro's does not have authority to issue orders necessary to manage an emergency unless authorized by the Governor, TEMA or other state department.

449. Prior to the issuance of Metro's Orders, the Governor, TEMA nor any state department delegated the authority to Metro or any official or agency thereof to manage the emergency related to COVID-19.

450. As a direct and proximate result of Defendants' actions and/or omissions stated herein, Plaintiffs have suffered a deprivation of their fundamental rights, privileges and immunities afforded under the law and seek declaratory and injunctive relief to prevent such further deprivation as requested herein. *See supra*. Count VI & Count VII.

## **COUNT VI: DECLARATORY JUDGMENT**

451. Plaintiffs incorporate by reference herein as fully as though set forth verbatim the allegations set forth in the preceding numbered paragraphs and do further allege as follows:

452. This Court is afforded authority pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure to declare rights and other legal relations of any interested party seeking such declaration, whether further relief is or could be sought. Such declaration has the force and effect of a final judgment or decree.

453. Plaintiffs are interested parties seeking declaration of their rights under the U.S. Constitution, the Tennessee Constitution and Tennessee law as the Orders addressed herein have functioned to deprive Plaintiffs of their fundamental rights and have caused them injury and damage, including, but not limited to, the loss of business income and goodwill.

454. Plaintiffs seek a declaratory judgment that Tenn. Code Ann. § 58-2-107(e), which gives the Governor's executive orders the "force of law", is facially unconstitutional as such is in violation of the United States Constitution as set forth in Counts I, II & III.

455. Plaintiffs seek a declaratory judgment that Tenn. Code Ann. § 58-2-107(e), which gives the Governor's executive orders the "force of law" is facially unconstitutional as such is in violation of the Tennessee Constitution as set forth in Count IV.

456. Plaintiffs seek a declaratory judgment that the Governor's Executive Orders 17, 21, 22, 23, 27, 29, 30, 35 & 38 as amended and restated and any extensions thereof are in violation of Plaintiffs' fundamental rights as guaranteed by the U.S. Constitution as set forth in Count I.

457. Plaintiffs seek a declaratory judgment that the Health Director Orders 1, 1A, 2, 3, 5, 6, 6A, 6B and 7 as amended and restated and any extensions thereof and the actions of Metro officials as stated herein are in violation of Plaintiffs' fundamental rights as guaranteed by the U.S.

Constitution as set forth in Count I.

458. Plaintiffs seek a declaratory judgment that the Governor's Executive Orders 17, 21, 22, 23, 27, 29, 30, 35 & 38 as amended and restated and any extensions thereof are in violation of Plaintiffs' right to due process under the law as guaranteed by the U.S. Constitution as set forth in Count II.

459. Plaintiffs seek a declaratory judgment that the Health Director Orders 1, 1A, 2, 3, 5, 6A, 6B & 7 as amended and restated and any extensions thereof and the actions of Metro officials as stated herein are in violation of Plaintiffs' right to due process under law as guaranteed by the U.S. Constitution as set forth in Count II.

460. Plaintiffs seek a declaratory judgment that the Governor's Executive Orders 17, 21, 22, 23, 27, 29, 30, 35 & 38 as amended and restated and any extensions thereof are in violation of Plaintiffs' right to equal protection under the law as guaranteed by the U.S. Constitution as set forth in Section III.

461. Plaintiffs seek a declaratory judgment that the Health Director Orders 1, 1A, 2, 3, 5, 6A, 6B & 7 as amended and restated and any extensions thereof and the actions of Metro officials as stated herein are in violation of Plaintiffs' right to equal protection of the law as guaranteed by the U.S. Constitution as set forth in Count III.

462. Plaintiffs seek a declaratory judgment that the Governor's Executive Orders 17, 21, 22, 23, 27, 29, 35 & 38 as amended and restated and any extensions thereof are in violation of the Tennessee Constitution as set forth in Count IV.

463. Plaintiffs seek a declaratory judgment that the Health Director Orders 1, 1A, 2, 3, 5, 6A, 6B & 7 as amended and restated and any extensions thereof and the actions of Metro officials as stated herein are in violation of the Tennessee Constitution as set forth in Count IV

464. Plaintiffs seek a declaratory judgment that the Governor's Executive Orders 17, 21, 22, 23, 27, 29, 35 & 38 as amended and restated and any extensions thereof are in violation of Tennessee law as set forth in Count V.

465. Plaintiffs seek a declaratory judgment that the Health Director Orders 1, 1A, 2, 3, 6A, 6B & 7 as amended and restated and any extensions thereof and the actions of Metro officials as stated herein are in violation of Tennessee law as set forth in Count V.

466. In addition to the declaratory judgments sought herein, Plaintiffs seek further necessary or proper prospective relief as justice may require pursuant to 28 U.S.C. § 2202.

#### **COUNT VII: INJUNCTIVE RELIEF**

467. Plaintiffs incorporate by reference herein the allegations set forth in the preceding numbered paragraphs and do further allege as follows:

468. Rule 65 of the Federal Rules of Civil Procedure affords this Court authority to issue preliminary injunctions or temporary restraining orders which describe in detail the act or acts restrained or required.

469. Plaintiffs seek a permanent injunction prohibiting the future deprivation of their fundamental rights and the violation of the U.S. Constitution, the Tennessee Constitution and Tennessee law as alleged herein.

470. Upon a motion and a hearing, Plaintiffs seek a temporary restraining order preventing Metro from continuing to enforce any restrictions in any Health Director order which are not consistent with the Governor's Executive Order No. 38 as such is applicable in 89 counties in Tennessee, but not in Davidson County, which is a violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution.

471. Pursuant to Executive Order, No. 38, restaurants and bars are provided guidelines, but these are only recommendations and are not mandatory restrictions, unlike the Metro's orders. *See* Exhibit 47 (Tennessee Pledge: Restaurant Industry).

472. Upon a motion and a hearing, Plaintiffs seek a temporary restraining order preventing Metro from continuing to enforce Health Director Orders 4 and 6, 6A, 6B & 7, including the three (3) tickets pending against Kid Rock's and Honky Tonk Central, as Metro has failed to enforce these orders equitably, has discriminated and/or retaliated against Plaintiffs, has exercised selective enforcement and/or are specifically targeted restaurant and bars and/or Plaintiffs, which is a violation of the Plaintiffs' fundamental rights, the Equal Protection Clause and/or the Due Process Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution.

473. Upon a motion and a hearing, Plaintiffs seek a temporary restraining order preventing the Metro Beer Permit Board from proceeding forward with the citation for suspension issued against Kid Rock's as Plaintiffs were discriminated against and/or retaliated against by Director Caldwell and/or the Board failed to provide due process to Kid Rock's as Defendant Jarmon is blatantly biased and a fair hearing is not possible which comports with the Equal Protection Clause and the Due Process Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution or otherwise is in compliance with the U.S. Constitution or applicable laws.

474. If Defendants reinstate any of their Orders challenged herein and thereby mandate that Plaintiffs cannot leave his homes or otherwise restrict their travel, Plaintiffs reserves the right to seek a temporary restraining order prohibiting the Defendants from enforcing such orders.

475. If Defendants reinstates any of their Orders challenged herein and thereby mandate that Plaintiffs cannot operate their business, Plaintiffs reserves the right to seek a temporary restraining order prohibiting the Defendants from enforcing such orders.

476. Plaintiffs' request for injunctive relief does not seek the repeal of orders or directives from any government authority which require social distancing, wearing masks, gloves or other protective gear, sanitary guidelines or other reasonable and scientific means of preventing the spread of COVID-19.

477. Plaintiffs are entitled to the requested temporary restraining orders as a likelihood exists that Plaintiffs will prevail on the merits of this matter as the Orders referenced herein have placed severe restrictions and limitations on Plaintiffs in an unprecedented manner which has resulted in the deprivation of their fundamental rights which has not occurred in America's recent history.

478. Plaintiffs are likely to succeed on the merits as the Sixth Circuit Court of Appeals has opined in a recent decision that, as a preliminary matter, the Governor's Executive Orders were an unconstitutional restraint on a woman's fundamental right to make health decisions related to her pregnancy. *See Adams & Boyle, P.C. v. Slatery*, No. 20-5408, 2020 WL 1982210, at \*9 (6th Cir. Apr. 24, 2020).

479. Importantly, the Sixth Circuit Court of Appeals rejected the assertion by the State that it was not in the court's purview to determine which method the State chose in addressing health and safety issues. *See Adams & Boyle, P.C. v. Slatery*, No. 20-5408, 2020 WL 1982210, at \*9 (6th Cir. Apr. 24, 2020) ( "And although the State cites language in *Jacobson* stating, "[i]t is no part of the function of a court or a jury to determine which one of two [responses] [is] likely to be most effective for the protection of the public against disease," . . . and suggests that this means we must defer uncritically to the State's *ipse dixit* that a three-week bar on procedural abortions is necessary to save critical PPE and preclude risky interpersonal contact, . . . neither *Jacobson [v. Massachusetts]* in particular, nor Supreme Court abortion precedent in general, requires such



abdication.”)(citations omitted).

480. Plaintiffs aver that the continue enforcement of the governmental orders referenced herein will cause Plaintiffs irreparable harm.

481. The deprivation of a Plaintiffs’ fundamental rights preserved by the U.S Constitution or the Tennessee Constitution as set forth herein, even if such infringement is minimal, by law constitutes irreparable harm.

482. The continued closure of Plaintiff’s business will cause irreparable harm to the reputation, good will and financial health of his business.

483. The granting of the injunctions sought herein will not cause substantial harm to others as, indeed, many citizens of Tennessee have suffered the same deprivation of his or her fundamental rights as set forth herein and the granting of the temporary restraining order will cease the irreparable harm caused to such citizens.

484. The granting of the injunctions sought herein will not cause substantial harm to others as Plaintiffs do not seek the repeal of orders or directives from any government authority which relate to quarantining those infected with COVID-19, epidemiological investigations of COVID-19 cases, social distancing, wearing masks, gloves or other protective gear, sanitary guidelines or other reasonable and scientific means of preventing the spread of COVID-19.

485. Plaintiffs further aver that a temporary restraining order is in the public interest as the prevention of the deprivation of citizens’ fundamental rights and civil liberties is always in the public’s best interest.

486. The government has at its disposal the mechanisms and authority created under the law to control the effects of COVID-19 and, thus, restraining the enforcement of the government orders addressed herein will not diminish such authority or effectiveness of the mechanisms put in

place under the law and the government can effectively prevent harm to others and move forward in the public's best interest even if such restraining orders are issued.

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs pray that proper process issue and be served upon Defendants, requiring them to answer the Complaint within the time prescribed by law and further Plaintiffs request:

1. A declaratory judgment that Defendants' actions as set forth herein were in violation of the United States Constitution, the Tennessee Constitution and/or applicable Tennessee state law and deprived Plaintiffs of their rights, immunities and privileges afforded thereunder as set forth in Count VI.

2. A preliminary and permanent injunction preventing future deprivation of Plaintiffs' fundamental rights and other rights afforded under the law by Defendants' Orders as alleged herein;

3. A monetary judgment pursuant to 42 U.S.C. §§ 1983 and 1985 against the Metro Defendants for compensatory and incidental damages caused by Metro Defendants' discriminatory and/or retaliatory action against Plaintiffs, whether collectively or individually.

4. That the State Defendants be required to pay Plaintiffs' reasonable attorney's fees related to the pursuit of prospective relief pursuant to 42 U.S.C. § 1988 and the equitable powers of this Court;

5. That the Metro Defendants be required to pay Plaintiffs' reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and the equitable powers of this Court;

6. That the Defendants be required to pay the Plaintiffs' discretionary costs and court costs of this action;

7. For any other general and further relief as may be considered by this Court and as justice may require.

Respectfully submitted,

**SOVEREIGNTY LEGAL FOUNDATION**

/s/ Kirk L. Clements

**KIRK L. CLEMENTS, BPR NO. 20672**

Attorney for Plaintiffs

105 Broadway, St. 2

Nashville, TN 37201

615-964-8000

615-953-1902 (fax)

[kirk@sovereigntylegal.org](mailto:kirk@sovereigntylegal.org)

/s/James Bryan Lewis

**JAMES BRYAN LEWIS, BPR NO. 15116**

Attorney for Plaintiffs

214 Second Avenue North, Suite 103

Nashville, TN 37201

615-256-2602

[bryan@bryanlewislaw.com](mailto:bryan@bryanlewislaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading has been forwarded to the attorneys and addresses listed below, by placing such in the U.S. Mail with sufficient postage affixed thereto or via the Court's electronic filing system on this the 26<sup>th</sup> day of June, 2020:

Keli Oliver, Esq.  
Michael R. Dohn, Esq.  
Metro Dept. of Law  
P.O. Box 196300  
Nashville, Tennessee 37219

Janet M. Kleinfelter, Esq.  
Cody N. Brandon, Esq.  
Miranda Jones

Tenn. Attorney General's Office  
P.O. Box 20207  
Nashville, Tennessee 37202

/s/ Kirk L. Clements  
**KIRK L. CLEMENTS**