

**COMMONWEALTH OF KENTUCKY
SCOTT COUNTY CIRCUIT COURT**

GOODWOOD BREWING COMPANY, LLC,
d/b/a Louisville Taproom, Frankfort
Brewpub, and Lexington Brewpub;
TRINDY'S, LLC; and **KELMARJO, INC.**,
d/b/a The Dundee Tavern,

Plaintiffs,

v.

ANDY BESHEAR, in his official capacity
as Governor of the Commonwealth of
Kentucky, **ERIC FRIEDLANDER**, in his
official capacity as Secretary of the
Cabinet for Health and Family Ser-
vices, and **STEVEN STACK, M.D.**, in his
official capacity as Commissioner of
the Kentucky Department of Public
Health,

Defendants.

Case No. _____

**VERIFIED COMPLAINT
FOR DECLARATORY RELIEF, A
TEMPORARY INJUNCTION, AND
A PERMANENT INJUNCTION**

Plaintiffs Goodwood Brewing Company, LLC, d/b/a Louisville Taproom, Frankfort Brewpub, and Lexington Brewpub; Trindy's, LLC; and Kelmarjo, Inc., d/b/a The Dundee Tavern; by and through counsel, bring this action for a declaration of rights, a temporary injunction, and a permanent injunction against the Defendants, Andy Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, Eric Friedlander, in his official capacity as Secretary of the Cabinet for Health and Family

Services, and Steven Stack, M.D., in his official capacity as Commissioner of the Kentucky Department of Public Health.¹

INTRODUCTION

The Kentucky Constitution divides the Commonwealth's power into three distinct branches. The legislative power—the power to shape the Commonwealth's public policy—is the “*exclusive domain*” of the General Assembly. *Caneyville Volunteer Fire Dep't v. Green's Motorcycle Salvage, Inc.*, 286 S.W.3d 790, 807 (Ky. 2009); see KY. CONST. § 29 (vesting “the legislative power” in the General Assembly). The executive power is vested in the Governor (KY. CONST. § 69), who is expressly obligated to “take care that the [General Assembly's] laws be faithfully executed,” *id.* § 81. The power to resolve cases and controversies is vested in the judicial branch. *Id.* § 109.

Plaintiffs bring this lawsuit to ensure that the Governor carries out his constitutional obligation to “take care that the laws be faithfully executed,” KY. CONST. § 69, including the laws duly enacted by the General Assembly just last month.

On March 6, 2020, in response to the COVID-19 pandemic, Governor Andy Beshear declared a state of emergency and, since that time, he and other officials in the Executive Branch have issued scores of orders, regulations, and directives.

Meeting for its regular session earlier this year, the General Assembly exercised its vested legislative power, KY. CONST. §§ 29, 36, 46, 56, 88, amended the Kentucky Revised Statutes (KRS), and placed lawful limits on the government's emergency powers. See 2021 H.B. 1, 2021 S.B. 1, and 2021 S.B. 2. Notably, under the new

¹ The Kentucky Attorney General is served pursuant to KRS § 418.075 but is not made a party.

laws, certain executive orders, administrative regulations, and other directives issued under KRS Chapter 39A lapse automatically after thirty days, unless the Governor obtains the General Assembly's approval to extend them. Further, certain regulations issued under KRS Chapter 13A similarly lapse after thirty days. The new laws went into effect February 2, 2021. The Governor did not seek or obtain the approval to extend any orders issued under KRS Chapter 39A. As a result, the executive orders issued under KRS Chapter 39A and regulations issued under KRS Chapter 13A in response to the COVID-19 pandemic lapsed automatically on March 4, 2021. And, effective March 5, 2021, these orders and regulations are of no force or effect.

The Governor, despite his express constitutional obligation to “take care that the [new] laws be faithfully executed,” KY. CONST. § 81, claims expansive, virtually unreviewable, and permanent authority to unilaterally regulate religious gatherings, schools, businesses, homes, and travel—so long as he, and he alone, determines that an emergency exists. He thus repudiates his constitutional duty.

Plaintiffs, who have struggled to keep their restaurants and bars in business amid the flurry of executive orders, file this lawsuit for a declaration that the Governor must carry out his solemn constitutional obligation to “take care that the laws”—including the new laws enacted just last month—“be faithfully executed.” KY. CONST. § 81. Plaintiffs also seek an order enjoining the Governor from enforcing any executive orders arising out of the COVID-19 pandemic—orders which are now lapsed by operation of the duly enacted laws of the Commonwealth.

Without the Court's action, Plaintiffs will remain subject to the Governor's "[a]bsolute and arbitrary" power, which is now exercised in direct defiance of the Commonwealth's laws. KY. CONST. § 2.

NATURE OF THE ACTION

Plaintiffs, a collection of bars and restaurants, seek to enforce the separation of powers enshrined in Kentucky's constitution and to defend their right to be free against arbitrary rule through the exercise of naked legislative power exercised by the executive branch in the form of executive and administrative orders affecting their legal rights, duties, and obligations. KY. CONST. §§ 2, 4, 27, 28, 29, 69, 81.

More than 30 days have passed since Senate Bill 1, House Bill 1, and Senate Bill 2 became effective law and, therefore, none of the executive orders related to the COVID-19 pandemic that restrict Plaintiffs' businesses remain in effect. Plaintiffs seek a declaration of their legal rights and obligations concerning compliance with the executive and administrative orders issued by Governor Beshear and his designees pursuant to the March 6, 2020, declaration of a state of emergency in response to COVID-19.

Plaintiffs likewise seek a temporary injunction and a permanent injunction against the enforcement of any and all "administrative regulations, or other directives issued under [Chapter 39A of the Kentucky Revised Statutes] by the Governor" that were not extended through approval by the Kentucky General Assembly on or before March 4, 2021 pursuant to KRS § 39A.090(2)(a), as amended by Senate Bill 1.

JURISDICTION

1. An actual, justiciable controversy exists, and this Court has jurisdiction over this action pursuant to KRS § 418.040, KRS § 23A.010, CR 57, and CR 65.

VENUE

2. Venue is appropriate in this Court pursuant to KRS § 452.405 because Trindy's, LLC, a named Plaintiff, is physically located in Scott County. It is therefore in this county that any executive or administrative orders would be enforced against it. The requested injunctive relief would operate to prevent enforcement of executive and administrative orders in this county against Trindy's, LLC, and the declaratory relief sought by Plaintiffs would likewise concern the rights of a business located in this county.

DEFINITION

3. The term "Executive Order(s)" in this Complaint refers to (a) "[e]xecutive orders, administrative regulations, or other directives issued under [KRS Chapter 39A] by the Governor" that "[p]lace[] restrictions on the in-person meeting or place[] restrictions on the functioning of" private businesses, KRS § 39A.090(2)(a)(1)(b) (eff. 2/2/21); and/or (b) "[a]ny administrative regulation promulgated under the authority of" KRS § 214.020 that "[p]laces restrictions on the in-person meeting or functioning of" private business, *id.* § 214.020(2)(a)(1)(b); as further identified in ¶¶11–31, 43–55, 60–61 below and reproduced in Exhibits 1–23 & 28, attached hereto.

PARTIES

Plaintiffs

4. Plaintiffs are bar and restaurant businesses located in the Commonwealth of Kentucky.

5. Plaintiff **Trindy's, LLC**, operates a family restaurant with a full bar at 751 Stone Drive, Suite 20, Georgetown, KY 40324 and is located in Scott County, Kentucky.

6. Plaintiff **Goodwood Brewing Company, LLC**, operates a brewery, bar, and restaurant business across three physical locations in the Commonwealth of Kentucky.

a. Goodwood's first location, Louisville Taproom, is a 5,000-square-foot taproom with two full bars, two music stages, a restaurant, and a production brewery, located at 636 East Main Street, Louisville, KY 40202 in Jefferson County, Kentucky.

b. Goodwood's second location, Frankfort Brewpub, is a 6,000-square-foot restaurant with a brewery, located at 109 West Main Street, Frankfort, KY 40601 in Franklin County, Kentucky.

c. Goodwood's third location, Lexington Brewpub, is a 6,500-square-foot restaurant, bar, and brewery, located at 200 Lexington Green Circle, Lexington, KY 40503 in Fayette County, Kentucky.

7. Plaintiff Kelmarjo, Inc., d/b/a **The Dundee Tavern**, is a bar and restaurant, located at 2224 Dundee Road, Louisville, KY 40205 in Jefferson County, Kentucky.

Defendants

8. Defendant Hon. Andy Beshear is the duly elected Governor of Kentucky. He is sued in his official capacity. He issued, or authorized the issuance of, the Executive Orders, and he is responsible for their enforcement.

9. Defendant Eric Friedlander is the Secretary of the Cabinet for Health and Family Services (CHFS) and is sued in his official capacity. He issued, or authorized the issuance of, one or more of the Executive Orders, and he is responsible for their enforcement.

10. Defendant Steven Stack, M.D., is the Commissioner of the Kentucky Department of Public Health and is sued in his official capacity. He issued, or authorized the issuance of, one or more of the Executive Orders, and he is responsible for their enforcement.

BACKGROUND

The Executive Branch Issues ***Executive Orders in Response to COVID-19***

11. On March 6, 2020, in response to the COVID-19 pandemic caused by the SARS-COV-2 virus, Governor Beshear declared a state of emergency by Executive Order 2020-215. A copy of Executive Order 2020-215 is attached as **Exhibit 1**.

12. Since Governor Beshear's emergency declaration, and in response to COVID-19, the Governor and/or his designees, specifically CHFS Secretary Eric

Friedlander and Public Health Commissioner Steven Stack, M.D., have issued and continue to issue (and/or have enforced and continue to enforce or threaten to enforce) orders, administrative regulations, mandates, and other directives to individuals and businesses. These Executive Orders have declared and ordered which activities might be allowed, disallowed, or some combination thereof. The most pertinent of the Executive Orders are described here.

13. On March 16, 2020, CHFS ordered restaurants and bars to limit services to carry-out, drive-thru, and delivery only. This order expired by its own terms on March 30, 2020. A copy of CHFS's March 16, 2020 Order is attached as **Exhibit 2**.

14. The next day, March 17, 2020, CHFS ordered "public-facing businesses that encourage public congregation or, that by the nature of the service to the public, cannot comply with CDC guidelines concerning social distancing" to "cease in-person operations." These businesses included entertainment, hospitality, and recreational facilities, gyms, salons, theaters, and sporting-event facilities. To "avoid[] doubt," this order provided a laundry list of businesses that were permitted to remain open, "subject to limitations provided in prior orders" and, "to the extent practicable," subject to implementing certain CDC guidance. Among the businesses allowed to reopen and provide goods and services to the public (and in person) under this order were businesses providing food—except, apparently, restaurants and bars—agriculture, construction, retail, home repair/hardware and auto repair, insurance, veterinary clinics and pet stores, storage, public transportation, and hotels and commercial lodging. A copy of CHFS's March 17, 2020 Order is attached as **Exhibit 3**.

15. Two days later, March 19, 2020, CHFS ordered that “[a]ll mass gatherings are hereby prohibited.” Mass gatherings “include[d] any event or convening that brings together groups of individuals, including, but not limited to,” faith-based gatherings; community, civic, public, leisure, or sporting events; parades; festivals; conventions; fundraisers; “and similar activities.” To “avoid[] doubt,” several activities were excepted from this order, including “normal” operations at airports, libraries, shopping malls, “or other spaces where persons may be in transit.” The order also did not apply to “typical” office environments, factories, or retail or grocery stores “where large numbers of people are present, but maintain appropriate social distancing.” A copy of CHFS’s March 19, 2020 Order is attached as **Exhibit 4**.

16. Also on March 19, 2020, the Commonwealth’s Public Protection Cabinet—apparently countermanding CHFS’s March 16, 2020 Order (Exh. 2) described above—issued an order through which the Commonwealth’s Department of Alcoholic Beverage Control, in order “to diminish the economic impact to restaurants and bars caused by this sudden closing,” ordered “supplemental rules while the prohibition of onsite consumption of food and beverage persists under Executive Order 2020-215.” The Department of Alcoholic Beverage Control’s order allowed on-premises drink licensees to sell alcohol for off-premises consumption, subject to certain restrictions. This order did not expressly allow sales of food for off-premises consumption. A copy of this March 19, 2020 Order is attached as **Exhibit 5**.

17. Just a few days later, March 22, 2020, Governor Beshear issued Executive Order 2020-246, which ordered and directed “[a]ll in-person retail businesses

that are not life-sustaining” to close, effective the next day at 8:00 p.m. “Life-sustaining” businesses “include[d] grocery stores, pharmacies, banks, hardware stores,” and “other businesses that provide staple goods.” A “full list of categories” of “life-sustaining in-person retail businesses” was attached to the order. The “categories” permitted to remain open were certain motor-vehicle and parts dealers (parts and rental business were included, dealers were not included); building-material and garden-equipment and supplies dealers; banks and other financial services; food and beverage “stores;” certain health and personal-care stores (pharmacies were included, optical-goods stores were not); gas stations and convenience stores; general-merchandise stores, including warehouse clubs (but not department stores); and pet and pet-supply stores (but not other “miscellaneous store retailers”). Those businesses allowed to open were required to follow, “to the fullest extent practicable,” guidance from the CDC and the Kentucky Department of Health. Finally, “[f]or the avoidance of doubt,” the order stated that “carry-out, delivery, and drive-through food and beverage sales may continue, consistent with” CHFS’s March 16, 2020 Order and the Public Protection Cabinet’s March 19, 2020 Order. A copy of Executive Order 2020-246 is attached as **Exhibit 6**.

18. Between March and May 2020, Governor Beshear issued other executive orders modifying or purporting to clarify previously issued orders and adopting additional restrictions (for example, suspending all “in-person government activities” that “are not necessary to sustain or protect life, or to supporting Life-Sustaining Busi-

nesses”), including restrictions on travel (subject to certain definitions and exemptions). A copy of Executive Order 2020-257 is attached as **Exhibit 7**. A copy of Executive Order 2020-258 is attached as **Exhibit 8**. A copy of Executive Order 2020-266 is attached as **Exhibit 9**. A copy of Executive Order 2020-315 is attached as **Exhibit 10**. According to Executive Order 2020-257 (Mar. 25, 2020), for example, carry-out, delivery, and drive-through food and beverage sales were allowed to continue, consistent with CHFS’s March 16, 2020 Order and the Public Protection Cabinet’s March 19, 2020 Order. *See* Exh. 7.

19. Through Executive Order 2020-323 (May 8, 2020), Governor Beshear announced a phased reopening plan. Among other things, this order allowed “businesses that are not life-sustaining” to reopen on May 11, 2020, under various restrictions. This order described “businesses that are not life-sustaining” as “including, but not limited to” manufacturing, distribution, and supply chain businesses; vehicle and vessel dealerships; horse-racing tracks; pet care, grooming, and boarding businesses; photography businesses, and office-based businesses. A copy of Executive Order 2020-323 is attached as **Exhibit 11**. The requirements for reopening businesses—which have changed over the past year—are published here: <https://govstatus.egov.com/ky-healthy-at-work>.

20. On May 11, 2020, CHFS issued an order requiring all “entities” in Kentucky to comply with the “Minimum Requirements for All Entities.” A copy of CHFS’s May 11, 2020 Order is attached as **Exhibit 12**.

21. On May 22, 2020, CHFS issued an order amending its March 16, 2020 Order regarding restaurants and its March 17, 2020 Order concerning “public-facing businesses.” Pursuant to this May 22 Order, the March 16, 2020 Order “no longer prohibits restaurants holding a food service permit in good standing and having table seating from providing food and beverage sales for onsite consumption.” This May 22 order required restaurants to comply with the Minimum Requirements for All Entities and with additional “Requirements for Restaurants,” published at <https://healthyatowrk.ky.gov>. For the purposes of this May 22, 2020 Order, a “restaurant” was described as “an entity that stores, prepares, serves, vends food directly to the consumer or otherwise provides food for human consumption, and must hold a food service permit in good standing and have table seating.” The March 16, 2020 Order “remain[ed] in effect for establishments that are not restaurants.” Further, alcohol sales “at establishments that are not restaurants remain[ed] restricted to carry-out, delivery and drive-thru services only, to the extent permitted by law. Onsite consumption remain[ed] prohibited at establishments that are not restaurants.” A copy of CHFS’s May 22, 2020 Order is attached as **Exhibit 13**.

22. On June 29, 2020, CHFS issued an order modifying previous orders. According to this June 29, 2020 Order, among other things, CHFS’s March 16, 2020 Order, concerning restaurants, “no longer prohibit[ed] bars that store, prepare, serve, or vend alcohol directly to the consumer for on-site consumption, and hold an active license to sell alcohol by the drink from providing beverage sales to consumers for onsite consumption.” For purposes of this order, a “bar” was described as “an entity

that stores, prepares, serves, or vends alcohol directly to the consumer for on-site consumption, and must hold an active license to sell alcohol by the drink.” CHFS’s March 16, 2020 Order “remain[ed] in effect for establishments that are not bars or restaurants.” Finally, this June 29, 2020 Order stated that bars and restaurants were subject to the Minimum Requirements for All Entities applicable to all entities in Kentucky and ordered bars and restaurants to “implement and follow” the “Requirements for Restaurants and Bars,” <https://healthyatwork.ky.gov>. Among the requirements was a 50%-capacity limit. A copy of CHFS’s June 29, 2020 Order is attached as **Exhibit 14**. A copy of Requirements for Restaurants and Bars, Version 1.0, is attached as **Exhibit 15**.

23. On July 10, 2020, CHFS adopted a regulation, 902 KAR 2:190E, pursuant to KRS Chapter 13A imposing mask requirements for individuals while inside (among other places) restaurants and bars. A copy of 902 KAR 2:190E is attached as **Exhibit 16**.

24. On July 28, 2020, CHFS amended previous orders and ordered bars to cease in-person operations for on-site consumption. This order noted that, pursuant to Senate Bill 150 (R.S. 2020), “the sale of alcoholic beverages by delivery, to-go or carryout” was “permitted only when it is incidental to the purchase of a meal and alcoholic beverages [were] not to be sold in bulk quantity.” This order defined a bar as “an entity that stores, prepares, serves, or vends alcohol directly to the consumer for on-site consumption, and must hold an active license to sell alcohol by the drink.” But this order did “not apply to restaurants holding a food service permit in good

standing and having table seating.” This order was to remain in effect for 14 days subject to renewal. A copy of CHFS’s July 28, 2020 Order is attached as **Exhibit 17**.

25. On August 10, 2020, CHFS issued an order that permitted bars which “store, prepare, serve, or vend alcohol directly to the consumer for on-site consumption [to] resume in-person operations for on-site consumption.” This order, like the previous orders, provided that bars and restaurants were subject to the requirements applicable to all entities in Kentucky and were required to implement and follow the latest Requirements for Restaurants and Bars, found at <https://healthyatwork.ky.gov>. At that time, the Requirements for Restaurants and Bars imposed a 50% capacity, with social-distancing restrictions; a ban on bar seating and bar service; and curfews requiring businesses to halt food and beverage service by 10:00 p.m. local time and to close by 11:00 p.m. local time. A copy of CHFS’s August 10, 2020 Order is attached as **Exhibit 18**. A copy of Requirements for Restaurants and Bars, Version 5.0, effective August 11, 2020, is attached as **Exhibit 19**.

26. On September 15, 2020, Governor Beshear announced a change to curfews on bars and restaurants, which were then required to halt food and beverage service by 11:00 p.m. and close by 12:00 a.m. local time. See <https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=366> (last visited Mar. 7, 2021).

27. Version 5.4 of the Requirements for Restaurants and Bars went into effect on October 30, 2020. This version maintained the prohibition on bar seating and bar service; continued the curfews requiring dine-in food and drink service to cease

by 11:00 p.m. and requiring bars and restaurants to close by midnight (except for drive-thru, carry-out, and delivery services); and kept the 50%-capacity limitation in place. A copy of Requirements for Restaurants and Bars, Version 5.4, is attached as **Exhibit 20**.

28. On November 18, 2020, Governor Beshear issued Executive Order 2020-968, which ordered and directed, as of November 20, 2020, all restaurants and bars to cease all indoor food and beverage consumption. The order allowed outdoor seating if tables were limited to eight persons from a maximum of two households and the tables were socially distanced by six feet. This order expired by its own terms on December 13, 2020, at 11:59 p.m. local time. A copy of Executive Order 2020-968 is attached as **Exhibit 21**.

29. On December 11, 2020, Governor Beshear issued Executive Order 2020-1034, to take effect on December 13, 2020, at 11:59 p.m. local time. This order stated that “[c]urrent restrictions and guidelines are available online at the Healthy at Work website (<https://govstatusegov.com/ky-healthy-at-work>).” A copy of Executive Order 2020-1034 is attached as **Exhibit 22**.

30. These orders threatened penalties for noncompliance. For example, CHFS’s June 29, 2020 Order states, “Failure to follow the requirements provided in this Order and any other Executive Order and any Cabinet Order, including but not limited to the Orders of the Cabinet for Health and Family Services, is a violation of the Orders issued under KRS Chapter 39A, and could subject businesses to closure or additional penalties as authorized by law.” *See* Exh. 14.

31. CHFS adopted a regulation, 902 KAR 2:211E, effective January 5, 2021, imposing mask requirements for individuals inside (among other places) restaurants and bars. A copy of 902 KAR 2:211E is attached as **Exhibit 23**.

The Executive Orders Severely Harmed Plaintiffs' Businesses

32. The restrictions from the Governor and other officials in the Executive Branch not only impeded the ability of Plaintiffs to fully use their property, but the arbitrary, inconsistent, and ever-changing nature of those directives made it—and continues to make it—extremely difficult to understand what restrictions were and are in effect at any given time.

33. Plaintiffs had to shutter their businesses for in-person service twice, relying only on takeout, delivery, and drive-thru services for sales: first, from March 16, 2020, until May 22, 2020, and, again, from November 20, 2021, until December 13, 2020.

The General Assembly Amends Kentucky Law

34. The General Assembly met for its constitutionally authorized regular session, beginning in January 2021, KY. CONST. § 36, and immediately began work on the Commonwealth's emergency-powers laws.

35. On January 5, 2021, House Bill 1, Senate Bill 1, and Senate Bill 2 were introduced in the General Assembly. See <https://apps.legislature.ky.gov/record/21rs/hb1.html> (H.B. 1) (last visited Mar. 7, 2021), <https://apps.legislature.ky.gov/record/21rs/sb1.html> (S.B. 1) (last visited Mar. 7, 2021), and <https://apps.legislature.ky.gov/record/21rs/sb2.html> (S.B. 2) (last visited Mar. 7, 2021).

36. **House Bill 1** provides that “[n]otwithstanding any state law, administrative regulation, executive order, or executive directive to the contrary, during the current state of emergency declared by the Governor in response to COVID–19 or any future state of emergency related to any virus or disease, including but not limited to any mutated strain of the current COVID-19 virus, until January 31, 2022,” any business “may remain open and fully operational for in-person services so long as it adopts an operating plan” that “[m]eets or exceeds all applicable guidance issued by the Centers for Disease Control and Prevention or by the executive branch, whichever is least restrictive,” “[d]etails how the business . . . will foster the safety of employees, customers, attendees and patrons, including social distancing requirements,” and posts the plan as directed. H.B. 1, § 1(1)(a) (R.S. 2021).

37. **Senate Bill 1** amended, among other provisions, statutes in KRS Chapter 39A—Statewide Emergency Management Programs. S.B. 1 (R.S. 2021).

38. Notably, **Senate Bill 1** limits the Governor’s power to issue indefinite emergency declarations and executive orders. According to now-amended KRS § 39A.090,

(2) (a) Executive orders, administrative regulations, or other directives issued under this chapter by the Governor shall be in effect no longer than thirty (30) days unless an extension, modification, or termination is approved by the General Assembly prior to the extension of any executive order or directive that:

1. Places restrictions on the in-person meeting or places restrictions on the functioning of the following:

...

b. Private businesses or nonprofit organizations; [or]

...

2. Imposes mandatory quarantine or isolation requirements.

...

(3) Upon the expiration of an executive order or other directive described in subsection (2)(a) of this section declaring an emergency or other implementation of powers under this chapter, the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in this chapter based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.

KRS § 39A.090(2)–(3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

39. **Senate Bill 2** amends, among other provisions, Kentucky’s Administrative Procedure Act. The new law requires the government to meet certain (higher than before) burdens before adopting “emergency” regulations. (S.B. 2 (R.S. 2021)).

40. **Senate Bill 2** further provides:

(1) When the Cabinet for Health and Family Services determines that an infectious or contagious disease will invade this state, it shall take necessary action and promulgate administrative regulations under KRS Chapter 13A to prevent the introduction or spread of such infectious or contagious disease or diseases within this state.

(2) Any administrative regulation promulgated under the authority of this section shall:

(a) Be in effect no longer than thirty (30) days if the administrative regulation:

1. Places restrictions on the in-person meeting or functioning of the following:

...

b. Private businesses or non-profit organizations; [or]

...

2. Imposes mandatory quarantine or isolation requirements[.]

KRS § 214.020(1)–(2) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

41. House Bill 1, Senate Bill 1, and Senate Bill 2 duly passed both houses of the General Assembly and were presented to the Governor for his signature, but the Governor vetoed all three bills.

42. The General Assembly voted to override the Governor's vetoes, and House Bill 1, Senate Bill 1, and Senate Bill 2 became effective February 2, 2021. A copy of House Bill 1 is attached as **Exhibit 24**. A copy of Senate Bill 1 is attached as **Exhibit 25**. A copy of Senate Bill 2 is attached as **Exhibit 26**.

The Executive Orders at Issue in this Lawsuit Are No Longer in Force

43. As alleged above, pursuant to Senate Bill 1, the Executive Orders in effect on February 2, 2021 remained in effect for 30 days thereafter. KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)); KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

44. The thirtieth day after February 2, 2021, was March 4, 2021.

45. Senate Bill 2 does not authorize the Governor to seek approval from the General Assembly to extend regulations 902 KAR 2:190E and 902 KAR 2:211E. *See* KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

46. Regulations 902 KAR 2:190E and 902 KAR 2:211E were in effect through March 4, 2021. KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

47. Regulations 902 KAR 2:190E and 902 KAR 2:211E lapsed by operation of law after thirty days after February 2, 2021, *i.e.*, March 5, 2021. KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

48. Accordingly, regulations 902 KAR 2:190E and 902 KAR 2:211E are no longer in effect, as of March 5, 2021. KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

49. Under Senate Bill 1, the Governor could have sought approval from the General Assembly to extend (or modify) the Executive Orders, except regulations 902 KAR 2:190E and 902 KAR 2:211E. *See* KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

50. Governor Beshear did not seek the General Assembly's approval to extend (or modify) the Executive Orders.

51. Governor Beshear did not obtain the General Assembly's approval to extend (or modify) the Executive Orders.

52. The General Assembly did not approve the extension of any of the Executive Orders.

53. The Executive Orders lapsed by operation of law after thirty days after February 2, 2021, *i.e.*, March 5, 2021. KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021))

54. Accordingly, the Executive Orders, are no longer in effect, as of March 5, 2021. KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

55. Further, "[u]pon the expiration" of the Executive Orders, Governor Beshear "shall not declare a new emergency or continue to implement any of the powers enumerated in [KRS Chapter 39A] based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the

prior approval of the General Assembly.” KRS § 39A.090(3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

**Plaintiffs’ Rights Will be Infringed
by Continued Enforcement of the Executive Orders**

56. The Commonwealth’s “Governor does not have emergency powers of indefinite duration.” *Beshear v. Acree*, __ S.W.3d __, 2020 WL 6736090, at *22 (Ky. 2020) (citing 2020 S.B. 150 § 3). And, as the Kentucky Supreme Court recognizes, the General Assembly has the power to limit the duration of the Governor’s emergency powers under KRS Chapter 39A. *See id.* at *21.

57. In contravention of Senate Bill 1 and Senate Bill 2, Governor Beshear continues to insist that Kentuckians comply with the Executive Orders—restrictions on Plaintiffs’ businesses (and on businesses, houses of worship, individuals, and families across the Commonwealth)—that are no longer in effect, pursuant to the unambiguous terms of KRS § 39A.090(2) & (3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)) and KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)). *See* <https://governor.ky.gov/covid19> (last visited Mar. 7, 2021); and <https://govstatus.egov.com/ky-healthy-at-work> (last visited Mar. 7, 2021).

58. Governor Beshear and Secretary Friedlander also initiated a lawsuit to challenge the validity of House Bill 1, Senate Bill 1, and Senate Bill 2. *See Beshear v. Osborne*, Franklin Circuit Court Civil Action No. 21-CI-00089. On March 3, 2021, Judge Phillip J. Shepherd issued an order granting the Governor’s motion for a temporary injunction. A copy of Judge Shepherd’s March 3, 2021 Order is attached as **Exhibit 27**.

59. Respectfully, Judge Shepherd's order is in error, and it does not bind Plaintiffs here.

60. On March 5, 2021—the day the Executive Orders became ineffective by operation of law—new restrictions on bars and restaurants purportedly became effective. According to Version 5.5 of the “Requirements for Restaurants and Bars,” the Governor has granted bars and restaurants permission to have a maximum capacity of 60%. A copy of Requirements for Restaurants and Bars, Version 5.5, is attached as **Exhibit 28**.

61. The Requirements for Restaurants and Bars, Version 5.5, states that “[r]estaurants and bars who fail to follow these requirements of the Executive Order will be subject to a fine and may also be subject to an order from a local health department or the Labor Cabinet requiring immediate closure.” *See* Exh. 28.

62. KRS § 39A.990 provides for punishments in the form of fines ranging from \$100 to \$250 for “violating any . . . administrative regulation or order promulgated pursuant to” Chapter 39A, which describes emergency powers such as those exercised by Governor Beshear and his designees in promulgating the Executive Orders.

63. Plaintiffs are thus precluded from fully opening their bars and restaurants, despite Senate Bill 1 and Senate Bill 2, without risking prosecution and the threat of fines and closures due to Defendants' continued enforcement of the Executive Orders.

64. Defendants' continued enforcement of the Executive Orders is unlawful.

65. Plaintiffs are thus subject to arbitrary rule by the enforcement of the Executive Orders, which are no longer in force pursuant to the unambiguous terms of the newly enacted laws. Defendants are now acting in direct violation of the law by continuing to enforce lapsed orders and by issuing and enforcing new orders.

Allegations in Support of Declaratory and Injunctive Relief

66. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

67. An actual, justiciable controversy exists between Plaintiffs and Defendants as to their legal rights and obligations. KRS § 418.040. Plaintiffs contend that the Kentucky Constitution requires the strict separation of the government's powers. The government's three powers are vested in separate departments. The legislative power is vested in the General Assembly; the executive power is vested in the Governor; and the judicial power is vested in the judicial branch. KY. CONST. §§ 29, 69, 109. The Kentucky Constitution further includes two express "Separation of Powers" clauses. First, the Constitution provides that the "powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another." *Id.* § 27. Second, the Constitution states that "[n]o person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or

permitted.” *Id.* § 28. Under the Kentucky Constitution, therefore, the General Assembly writes the laws and sets the Commonwealth’s policy; the Governor executes those laws—indeed, the Governor is expressly obligated to “take care that the laws be faithfully executed.” *Id.* § 81. Here, pursuant to the new laws duly enacted by the General Assembly, the Executive Orders issued in response to the COVID-19 pandemic are, as of March 5, 2021, no longer in effect. Plaintiffs therefore further contend that neither Governor Beshear nor anyone else in the Executive Branch may enforce those Executive Orders. Finally, Plaintiffs contend that “[u]pon the expiration of the” Executive Orders, neither Governor Beshear nor anyone else in the Executive Branch may “declare a new emergency or continue to implement any of the powers enumerated in [KRS Chapter 39A] based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.” KRS § 39A.090(3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)). Plaintiffs contend that the latest version of the Requirements for Restaurants and Bars (Exh. 28) constitutes a plain attempt to “continue to implement . . . the powers enumerated in [KRS Chapter 39A] based upon the same or substantially similar facts and circumstances” as those giving rise to the panoply of Executive Orders issued prior thereto. As such, the issuance or enforcement of “requirements” based upon expired Emergency Orders is plainly unlawful.

68. Accordingly, a present justiciable controversy exists between the parties concerning the continued enforcement of the Executive Orders and the enforcement of future orders, administrative regulations, or other directives issued under KRS

Chapter 39A. A judicial determination of rights and responsibilities arising from this controversy is necessary and appropriate at this time.

69. Plaintiffs are being and will continue to be directly, adversely, and irreparably harmed by Defendants' continued enforcement of the Executive Orders and of any future orders, administrative regulations, or other directives issued under KRS Chapter 39A. This enforcement deprives and will continue to deprive Plaintiffs of their ability to fully open their bars and restaurants—for which no damages are available. This enforcement further deprives and will continue to deprive Plaintiffs of, without limitation, their constitutional rights to “enjoying . . . their liberties,” KY. CONST. § 1, “acquiring and protecting [their] property,” *id.*, their constitutional right against absolute and arbitrary government, *id.* § 2, and their rights to the structural protections guaranteed by Kentucky's separation of powers, *id.* §§ 27–28, 29, 69, 109.

70. Defendants will not be harmed, as they have no valid interest in enforcing invalid laws and orders based on invalid laws, *i.e.*, the previous versions of the statutes amended in House Bill 1, Senate Bill 1, and Senate Bill 2.

71. Further, injunctive relief benefits Kentuckians generally because it is in the public interest that duly enacted laws are followed and enforced by the Commonwealth's chief executive who is bound by the Constitution to faithfully execute them. KY. CONST. § 81.

72. Finally, there is likewise a strong public interest in preventing the enforcement of arbitrary laws, here taking the form of executive orders and administrative regulations that enforce a declaration of emergency no longer in effect pursuant

to the legislation that designates emergency powers. KY. CONST. § 2; KRS §§ 39A.020(2), 214.020(2) (eff. 2/2/21).

CLAIMS FOR RELIEF

COUNT I

Declaratory Relief: The Executive Order declaring a state of emergency has lapsed pursuant to Senate Bill 1 and is no longer in effect

73. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

74. Governor Beshear declared a state of emergency on March 6, 2020, by Executive Order 2020-215, in response to the COVID-19 pandemic caused by the SARS-COV-2 virus. *See* Exh. 1.

75. According to Senate Bill 1,

(2) (a) Executive orders, administrative regulations, or other directives issued under this chapter by the Governor shall be in effect no longer than thirty (30) days unless an extension, modification, or termination is approved by the General Assembly prior to the extension of any executive order or directive that:

1. Places restrictions on the in-person meeting or places restrictions on the functioning of the following:

. . .

b. Private businesses

KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

76. Senate Bill 1 became effective February 2, 2021.

77. Defendants did not obtain approval from the General Assembly to extend or modify Executive Order 2020-215.

78. Pursuant to Senate Bill 1, Executive Order 2020-215 is, as of March 5, 2021, no longer in effect.

COUNT II**Temporary and Permanent Injunctive Relief: Defendants should be temporarily and permanently enjoined from enforcing Executive Order 2020-215 and any powers or authorities created or established in Executive Order 2020-215**

79. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

80. Governor Beshear declared a state of emergency on March 6, 2020, by Executive Order 2020-215, in response to the COVID-19 pandemic caused by the SARS-COV-2 virus. *See* Exh. 1.

81. According to Senate Bill 1,

(2) (a) Executive orders, administrative regulations, or other directives issued under this chapter by the Governor shall be in effect no longer than thirty (30) days unless an extension, modification, or termination is approved by the General Assembly prior to the extension of any executive order or directive that:

1. Places restrictions on the in-person meeting or places restrictions on the functioning of the following:

...

b. Private businesses

KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

82. Senate Bill 1 became effective February 2, 2021.

83. Defendants did not obtain approval from the General Assembly to extend or modify Executive Order 2020-215.

84. Pursuant to Senate Bill 1, Executive Order 2020-215 is, as of March 5, 2021, no longer in effect, and Defendants should be temporarily and permanently

enjoined from enforcing Executive Order 2020-215 and any powers or authorities created or established in Executive Order 2020-215.

COUNT III

Declaratory Relief: All of the Executive Orders have lapsed pursuant to Senate Bill 1 and Senate Bill 2, and they are no longer in effect

85. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

86. Defendants issued and enforced the Executive Orders described above, and they continue to enforce the Executive Orders (except to the extent Executive Orders or portions thereof were invalidated by other Executive Orders)—including enforcement against Plaintiffs here.

87. According to Senate Bill 1,

(2) (a) Executive orders, administrative regulations, or other directives issued under this chapter by the Governor shall be in effect no longer than thirty (30) days unless an extension, modification, or termination is approved by the General Assembly prior to the extension of any executive order or directive that:

1. Places restrictions on the in-person meeting or places restrictions on the functioning of the following:

. . .

b. Private businesses

KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

88. Pursuant to Senate Bill 2, administrative regulations promulgated under the authority of KRS § 214.020 that “[p]lace[] restrictions on the in-person meeting or functioning of” private businesses shall “[b]e in effect no longer than thirty (30) days.” *Id.* § 214.020(2)(1)(b) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

89. Senate Bill 1 became effective February 2, 2021.

90. Senate Bill 2 became effective February 2, 2021.

91. Under Senate Bill 1, the Governor could have sought approval from the General Assembly to extend (or modify) the Executive Orders, except regulations 902 KAR 2:190E and 902 KAR 2:211E. *See* KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

92. Senate Bill 2 does not authorize the Governor to seek approval from the General Assembly to extend regulations 902 KAR 2:190E and 902 KAR 2:211E. *See* KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

93. Governor Beshear did not seek the General Assembly's approval to extend (or modify) the Executive Orders.

94. Governor Beshear did not obtain the General Assembly's approval to extend (or modify) the Executive Orders.

95. The General Assembly did not approve the extension of any of the Executive Orders.

96. The Executive Orders lapsed by operation of law after thirty days after February 2, 2021, *i.e.*, March 5, 2021. KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)); § 214.020(2)(1)(b) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

97. Accordingly, the Executive Orders are no longer in effect, as of March 5, 2021. KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)); § 214.020(2)(1)(b) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

COUNT IV**Temporary and Permanent Injunctive Relief:
Defendants should be temporarily and permanently enjoined from
enforcing the Executive Orders against Plaintiffs**

98. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

99. Defendants issued and enforced the Executive Orders described above, and they continue to enforce the Executive Orders (except to the extent Executive Orders or portions thereof were invalidated by other Executive Orders)—including enforcement against Plaintiffs here.

100. According to Senate Bill 1,

(2) (a) Executive orders, administrative regulations, or other directives issued under this chapter by the Governor shall be in effect no longer than thirty (30) days unless an extension, modification, or termination is approved by the General Assembly prior to the extension of any executive order or directive that:

1. Places restrictions on the in-person meeting or places restrictions on the functioning of the following:

. . .

b. Private businesses

KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

101. Pursuant to Senate Bill 2, administrative regulations promulgated under the authority of KRS § 214.020 that “[p]lace[] restrictions on the in-person meeting or functioning of” private businesses shall “[b]e in effect no longer than thirty (30) days.” *Id.* § 214.020(2)(1)(b) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

102. Senate Bill 1 became effective February 2, 2021.

103. Senate Bill 2 became effective February 2, 2021.

104. Under Senate Bill 1, the Governor could have sought approval from the General Assembly to extend (or modify) the Executive Orders, except regulations 902 KAR 2:190E and 902 KAR 2:211E. *See* KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

105. Senate Bill 2 does not authorize the Governor to seek approval from the General Assembly to extend regulations 902 KAR 2:190E and 902 KAR 2:211E. *See* KRS § 214.020(2)(a) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

106. Governor Beshear did not seek the General Assembly's approval to extend (or modify) the Executive Orders.

107. Governor Beshear did not obtain the General Assembly's approval to extend (or modify) the Executive Orders.

108. The General Assembly did not approve the extension of any of the Executive Orders.

109. The Executive Orders lapsed by operation of law after thirty days after February 2, 2021, *i.e.*, March 5, 2021. KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)); § 214.020(2)(1)(b) (eff. 2/2/21) (S.B. 2 (R.S. 2021)).

110. Accordingly, the Executive Orders are no longer in effect, as of March 5, 2021, KRS § 39A.090(2) (eff. 2/2/21) (S.B. 1 (R.S. 2021)); § 214.020(2)(1)(b) (eff. 2/2/21) (S.B. 2 (R.S. 2021)), and Defendants should be temporarily and permanently enjoined from enforcing the Executive Orders against Plaintiffs.

COUNT V**Declaratory Relief: Defendants are prohibited from issuing and enforcing new orders related to the COVID-19 pandemic**

111. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

112. Pursuant to Senate Bill 1,

(3) Upon the expiration of an executive order or other directive described in subsection (2)(a) of this section declaring an emergency or other implementation of powers under [KRS Chapter 39A], the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in this chapter based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.

KRS § 39A.090(3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

113. The Executive Orders, as of March 5, 2021, are no longer in effect.

114. Accordingly, the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly. KRS § 39A.090(3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

115. Further, the latest version of the Requirements for Restaurants and Bars (Exh. 28) was unlawfully issued on March 5, 2021—after the other Executive Orders expired by operation of the new laws.

COUNT VI**Temporary and Permanent Injunctive Relief: Defendants should be temporarily and permanently enjoined from issuing and enforcing new orders related to the COVID-19 pandemic**

116. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

117. Pursuant to Senate Bill 1,

(3) Upon the expiration of an executive order or other directive described in subsection (2)(a) of this section declaring an emergency or other implementation of powers under [KRS Chapter 39A], the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in this chapter based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.

KRS § 39A.090(3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

118. The Executive Orders, as of March 5, 2021, are no longer in effect.

119. Accordingly, the Governor shall not declare a new emergency or continue to implement any of the powers enumerated in KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly. KRS § 39A.090(3) (eff. 2/2/21) (S.B. 1 (R.S. 2021)).

120. Defendants should be temporarily and permanently enjoined from enforcing the latest version of the Requirements for Restaurants and Bars (Exh. 28), which was unlawfully issued on March 5, 2021—after the other Executive Orders expired by operation of the new laws.

121. Defendants should be temporarily and permanently enjoined from declaring a new emergency or continuing to implement any of the powers enumerated

in KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.

COUNT VII

Due Process: Defendants' attempted and threatened enforcement of the Executive Orders violates Plaintiffs' Rights of Due Process

122. Plaintiffs incorporate by reference every allegation previously set forth in this Complaint as if fully set forth herein.

123. By enforcing, attempting to enforce, or threatening to enforce the Executive Orders after their power to do so has been removed by the General Assembly through the due enactment of new laws, Defendants have acted and continue to act arbitrarily and capriciously, in violation of Section 2 of Kentucky's Constitution.

124. By enforcing, attempting to enforce, or threatening to enforce the Executive Orders after their power to do so has been removed by the General Assembly through the due enactment of new laws, Defendants have violated and continue to violate Section 4 of Kentucky's Constitution, in that Defendants claim power that they do not have under Kentucky's representative form of government.

125. Even assuming, *arguendo*, the intrinsic wisdom or desirability of the instructions set forth in the Executive Orders, government may not seize power not duly given it without violating fundamental principles of due process, which are embodied in (among other places) Kentucky's Constitution, including (without limitation) Sections 1, 2, and 4 thereof. Defendants' attempt to force compliance with orders which have now expired as a matter of law serves to deprive the Plaintiffs and others like them of these fundamental due process rights.

126. As a result of Defendants' actions, Plaintiffs have been deprived of their substantive and procedural due process rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. A declaratory judgment, pursuant to KRS § 418.040, from the Court that pursuant to Senate Bill 1, Executive Order 2020-215 is, as of March 5, 2021, no longer in effect and binding on Plaintiffs.

2. Temporary and permanent injunctive relief enjoining Defendants from enforcing Executive Order 2020-215 and any powers or authorities created or established in Executive Order 2020-215.

3. A declaratory judgment, pursuant to KRS § 418.040, from the Court that all of the Executive Orders are, as of March 5, 2021, no longer in effect and binding on Plaintiffs.

4. Temporary and permanent injunctive relief enjoining Defendants from enforcing the Executive Orders against Plaintiffs.

5. A declaratory judgment, pursuant to KRS § 418.040, from the Court that pursuant to Senate Bill 1, the latest version of the Requirements for Restaurants and Bars (Exh. 28) was unlawfully issued on March 5, 2021—after the other Executive Orders expired by operation of the new laws; and that the Governor may not declare a new emergency or continue to implement any of the powers enumerated in KRS Chapter 39A based upon the same or substantially similar facts and circumstances

as the original declaration or implementation without the prior approval of the General Assembly.

6. Temporary and permanent injunctive relief enjoining Defendants from enforcing the latest version of the Requirements for Restaurants and Bars (Exh. 28), which was unlawfully issued on March 5, 2021—after the other Executive Orders expired by operation of the new laws; and further, from declaring a new emergency or continuing to implement any of the powers enumerated in KRS Chapter 39A based upon the same or substantially similar facts and circumstances as the original declaration or implementation without the prior approval of the General Assembly.

DATED: March 8, 2021.

s/ Joshua S. Harp
JOSHUA S. HARP
Ky. Bar No. 91386
Baughman Harp, PLLC
401 West Main Street
Frankfort, KY 40601
Tel: (502) 227-2271
harp@harplawoffice.com

Respectfully submitted,

OLIVER J. DUNFORD*
Fla. Bar No. 1017791
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
Tel: (916) 503-9060
ODunford@pacificlegal.org

STEVEN M. SIMPSON*
DC Bar No. 462553
DANIEL T. WOISLAW*
Va. Bar No. 91180
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 610
Arlington, VA 22201
Tel: (202) 888-6881
SSimpson@pacificlegal.org
DWoislaw@pacificlegal.org

**Pro hac vice applications to be filed*

Attorneys for Plaintiffs