



CASE NO: A-20-817872-C  
Department 14

1 **COMP**

2 DENNIS L. KENNEDY  
3 Nevada Bar No. 1462

4 KELLY B. STOUT  
5 Nevada Bar No. 12105

6 PAUL C. WILLIAMS  
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17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 MILLER'S TAVERN LLC d/b/a Miller's Tavern  
20 at Palm Valley, a Nevada limited liability  
21 company; GMI, INC. d/b/a Chubby's Pub, a  
22 Nevada corporation; GOMIL, INC. d/b/a Molly's  
23 Tavern, a Nevada corporation; MOLLY'S  
24 CHEYENNE, LLC d/b/a Molly's Cheyenne, a  
25 Nevada limited liability company; MOLLY'S  
26 DEER SPRINGS, LLC d/b/a Molly's Deer  
27 Springs, a Nevada limited liability company;  
28 MOLLY'S FORT APACHE, LLC d/b/a Molly's  
Fort Apache, a Nevada limited liability company;  
MOLLY'S TENAYA, LLC d/b/a Molly's  
Tenaya; a Nevada limited liability company;  
RMRM INC. d/b/a Foothills Tavern, a Nevada  
corporation; RMTWO. INC. d/b/a Molly's, a  
Nevada corporation; SILVEREAST LLC d/b/a  
Molly's Tavern, a Nevada limited liability  
company; NORTHSHORE ENTERTAINMENT  
GROUP LLC d/b/a Steiner's, a Nevada Style  
Pub, a Nevada limited liability company; SEA  
BREEZE ENTERTAINMENT GROUP LLC  
d/b/a Steiner's, a Nevada Style Pub, a Nevada  
limited liability company; WINDMILL  
ENTERTAINMENT GROUP LLC d/b/a  
Steiner's, a Nevada Style Pub, a Nevada limited  
liability company; RAISING THE KILT, LLC

Case No.  
Dept. No.

**COMPLAINT AND  
PETITION FOR WRIT OF MANDAMUS**

- Exempt from Arbitration – NAR 3(A), 5
- Action for Declaratory Relief
  - Action Presenting a Significant Issue of Public Policy
  - Action Seeking Equitable or Extraordinary Relief

**BAILEY ❖ KENNEDY**  
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LAS VEGAS, NEVADA 89148-1302  
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1 d/b/a Aces Bar & Grill, a Nevada limited liability  
2 company; CHAMPIONS TAVERN LLC d/b/a  
3 Aces East, a Nevada limited liability company;  
4 WEDGIES SPORTS BAR, LLC - PIONEER  
5 BLVD d/b/a Wedgies Sports Bar, a Nevada  
6 limited liability company; ARONSOHN, INC.  
7 d/b/a Blue Ox Tavern, a Nevada corporation;  
8 TOWN LOUNGE, LLC d/b/a Born and Raised, a  
9 Nevada limited liability company; TOWN  
10 LOUNGE HENDERSON LLC d/b/a Born and  
11 Raised Henderson, a Nevada limited liability  
12 company; TOWN LOUNGE GRAND BAZAAR  
13 LLC d/b/a Born and Raised Craft Pub, a Nevada  
14 limited liability company; BOB KINGSTON  
15 PRODUCTIONS, INC. d/b/a Saddle N Spurs  
16 Saloon, a Nevada corporation; SHUCKS II, LLC  
17 d/b/a Shucks Tavern, a Nevada limited liability  
18 company; SHUCKS III, LLC d/b/a Shucks  
19 Tavern, a Nevada limited liability company;  
20 EDGE OF TOWN LLC d/b/a The Edge of Town  
21 Bar & Grille, a Nevada limited liability company;  
22 BRIMSTONE, LLC d/b/a Bomas Bar and Grill, a  
23 Nevada limited liability company; STARR &  
24 SON, LLC d/b/a The Martini, a Nevada limited  
25 liability company; STARR GAMING LLC d/b/a  
26 The Pint, a Nevada limited liability company;  
27 KSR TAVERN, LLC d/b/a Mulligans Border, a  
28 Nevada limited liability company; KSRD  
Tavern, LLC d/b/a Mulligans Pub & Grill, a  
Nevada limited liability company;  
INTERCAPITAL DEVELOPMENT, INC. d/b/a  
Goldfinger's Bar & Grill, a Nevada corporation;  
CREATIVE NIGHTLIFE CONCEPTS, LLC  
d/b/a Downtown Cocktail Room, a Nevada  
limited liability company; WFTLV01, LLC d/b/a  
Wahoo's Fish Taco, a Nevada limited liability  
company; WFTLV02, LLC d/b/a Wahoo's Fish  
Taco, a Nevada limited liability company;  
WFTLV04, LLC d/b/a Wahoo's Fish Taco, a  
Nevada limited liability company; WFTLV05,  
LLC, d/b/a Wahoo's Fish Taco, a Nevada limited  
liability company; WFTLV06, LLC d/b/a  
Wahoo's Fish Taco, a Nevada limited liability  
company; BOGEYS LLC d/b/a Bogeys West, a  
Nevada limited liability company;

Plaintiffs/Petitioners,

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vs.

THE STATE OF NEVADA; STEPHEN F. SISOLAK, in his capacity as the Governor of Nevada; BARBARA K. CEGAVSKE, in her capacity as the Secretary of State of Nevada; and SCOTT W. ANDERSON, in his capacity as the Chief Deputy Secretary of State of Nevada,

Defendants/Respondents.

Plaintiffs/Petitioners MILLER’S TAVERN LLC d/b/a Miller’s Tavern at Palm Valley; GMI, INC. d/b/a Chubby’s Pub; GOMIL, INC. d/b/a Molly’s Tavern; MOLLY’S CHEYENNE, LLC d/b/a Molly’s Cheyenne; MOLLY’S DEER SPRINGS, LLC d/b/a Molly’s Deer Springs; MOLLY’S FORT APACHE, LLC d/b/a Molly’s Fort Apache; MOLLY’S TENAYA, LLC d/b/a Molly’s Tenaya; RMRM INC. d/b/a Foothills Tavern; RMTWO, INC. d/b/a Molly’s; SILVEREAST LLC d/b/a Molly’s Tavern; NORTHSHORE ENTERTAINMENT GROUP LLC d/b/a Steiner’s, a Nevada Style Pub; SEA BREEZE ENTERTAINMENT GROUP LLC d/b/a Steiner’s, a Nevada Style Pub; WINDMILL ENTERTAINMENT GROUP LLC d/b/a Steiner’s, a Nevada Style Pub; RAISING THE KILT, LLC d/b/a Aces Bar & Grill; CHAMPIONS TAVERN LLC d/b/a Aces East; WEDGIES SPORTS BAR, LLC - PIONEER BLVD d/b/a Wedgies Sports Bar; ARONSOHN, INC. d/b/a Blue Ox Tavern; TOWN LOUNGE, LLC d/b/a Born and Raised; TOWN LOUNGE HENDERSON LLC d/b/a Born and Raised Henderson; TOWN LOUNGE GRAND BAZAAR LLC d/b/a Born and Raised Craft Pub, a Nevada limited liability company; BOB KINGSTON PRODUCTIONS, INC. d/b/a Saddle N Spurs Saloon; SHUCKS II, LLC d/b/a Shucks Tavern; SHUCKS III, LLC d/b/a Shucks Tavern; EDGE OF TOWN LLC d/b/a The Edge of Town Bar & Grille; BRIMSTONE, LLC; STARR & SON, LLC d/b/a The Martini; STARR GAMING LLC d/b/a The Pint; KSR TAVERN, LLC d/b/a Mulligans Border; KSRD TAVERN, LLC d/b/a Mulligans Pub & Grill; INTERCAPITAL DEVELOPMENT, INC. d/b/a Goldfinger’s Bar & Grill; CREATIVE NIGHTLIFE CONCEPTS, LLC d/b/a Downtown Cocktail Room; WFTLV01, LLC d/b/a Wahoo’s Fish Taco; WFTLV02, LLC d/b/a Wahoo’s Fish Taco; WFTLV04, LLC d/b/a Wahoo’s Fish Taco; WFTLV05, LLC, d/b/a Wahoo’s Fish Taco; WFTLV06, LLC d/b/a

1 Wahoo’s Fish Taco; and BOGEYS LLC d/b/a Bogeys West, a Nevada limited liability company  
2 (collectively, “Plaintiffs/Petitioners”) complain and allege against Defendants the State of Nevada  
3 (“Nevada”); Stephen F. Sisolak, in his capacity as the Governor of Nevada (“Governor Sisolak”);  
4 Barbara K. Cegavske, in her capacity as the Secretary of State of Nevada (“Secretary Cegavske”);  
5 and Scott W. Anderson, in his capacity as the Chief Deputy Secretary of State of Nevada (“Deputy  
6 Secretary Anderson”) (collectively, “Defendants/ Respondents”) as follows:

7 **I. THE PARTIES**

8 1. MILLER’S TAVERN LLC d/b/a Miller’s Tavern at Palm Valley is a Nevada limited  
9 liability company with its principal place of business in Clark County, Nevada.

10 2. GMI, INC. d/b/a Chubby’s Pub is a Nevada corporation with its principal place of  
11 business in Clark County, Nevada.Fp

12 3. GOMIL, INC. d/b/a Molly’s Tavern is a Nevada corporation with its principal place  
13 of business in Clark County, Nevada.

14 4. MOLLY’S CHEYENNE, LLC d/b/a Molly’s Cheyenne is a Nevada limited liability  
15 company with its principal place of business in Clark County, Nevada.

16 5. MOLLY’S DEER SPRINGS, LLC d/b/a Molly’s Deer Springs is a Nevada limited  
17 liability company with its principal place of business in Clark County, Nevada.

18 6. MOLLY’S FORT APACHE, LLC d/b/a Molly’s Fort Apache is a Nevada limited  
19 liability company with its principal place of business in Clark County, Nevada.

20 7. MOLLY’S TENAYA, LLC d/b/a Molly’s Tenaya is a Nevada limited liability  
21 company with its principal place of business in Clark County, Nevada.

22 8. RMRM INC. d/b/a Foothills Tavern is a Nevada corporation with its principal place  
23 of business in Clark County, Nevada.

24 9. RMTWO, INC. d/b/a Molly’s is a Nevada corporation with its principal place of  
25 business in Clark County, Nevada.

26 10. SILVEREAST LLC d/b/a Molly’s Tavern is a Nevada limited liability company  
27 with its principal place of business in Clark County, Nevada.

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- 1           11.     NORTHSHORE ENTERTAINMENT GROUP LLC d/b/a Steiner's, a Nevada Style  
2 Pub is a Nevada limited liability company with its principal place of business in Clark County,  
3 Nevada.
- 4           12.     SEA BREEZE ENTERTAINMENT GROUP LLC d/b/a Steiner's, a Nevada Style  
5 Pub is a Nevada limited liability company with its principal place of business in Clark County,  
6 Nevada.
- 7           13.     WINDMILL ENTERTAINMENT GROUP LLC d/b/a Steiner's, a Nevada Style Pub  
8 is a Nevada limited liability company with its principal place of business in Clark County, Nevada.
- 9           14.     RAISING THE KILT, LLC d/b/a Aces Bar & Grill is a Nevada limited liability  
10 company with its principal place of business in Clark County, Nevada.
- 11          15.     CHAMPIONS TAVERN LLC d/b/a Aces East is a Nevada limited liability company  
12 with its principal place of business in Clark County, Nevada.
- 13          16.     WEDGIES SPORTS BAR, LLC - PIONEER BLVD d/b/a Wedgies Sports Bar is a  
14 Nevada limited liability company with its principal place of business in Clark County, Nevada.
- 15          17.     ARONSOHN, INC. d/b/a Blue Ox Tavern is a Nevada corporation with its principal  
16 place of business in Clark County, Nevada.
- 17          18.     TOWN LOUNGE, LLC d/b/a Born and Raised is a Nevada limited liability  
18 company with its principal place of business in Clark County, Nevada.
- 19          19.     TOWN LOUNGE HENDERSON LLC d/b/a Born and Raised Henderson is a  
20 Nevada limited liability company with its principal place of business in Clark County, Nevada.
- 21          20.     TOWN LOUNGE GRAND BAZAAR LLC d/b/a Born and Raised Craft Pub is a  
22 Nevada limited liability company with its principal place of business in Clark County, Nevada.
- 23          21.     BOB KINGSTON PRODUCTIONS, INC. d/b/a Saddle N Spurs Saloon is a Nevada  
24 corporation with its principal place of business in Clark County, Nevada.
- 25          22.     SHUCKS II, LLC d/b/a Shucks Tavern is a Nevada limited liability company with  
26 its principal place of business in Clark County, Nevada.
- 27          23.     SHUCKS III, LLC d/b/a Shucks Tavern is a Nevada limited liability company with  
28 its principal place of business in Clark County, Nevada.

- 1           24.     EDGE OF TOWN LLC d/b/a The Edge of Town Bar & Grille is a Nevada limited  
2 liability company with its principal place of business in Clark County, Nevada.
- 3           25.     BRIMSTONE, LLC d/b/a Bomas Bar and Grill is a Nevada limited liability  
4 company with its principal place of business in Clark County, Nevada.
- 5           26.     STARR & SON, LLC d/b/a The Martini is a Nevada limited liability company with  
6 its principal place of business in Clark County, Nevada.
- 7           27.     STARR GAMING LLC d/b/a The Pint is a Nevada limited liability company with  
8 its principal place of business in Clark County, Nevada.
- 9           28.     KSR TAVERN, LLC d/b/a Mulligans Border is a Nevada limited liability company  
10 with its principal place of business in Clark County, Nevada.
- 11          29.     KSRD TAVERN, LLC d/b/a Mulligans Pub & Grill is a Nevada limited liability  
12 company with its principal place of business in Clark County, Nevada.
- 13          30.     INTERCAPITAL DEVELOPMENT, INC. d/b/a Goldfinger's Bar & Grill is a  
14 Nevada corporation with its principal place of business in Clark County, Nevada.
- 15          31.     CREATIVE NIGHTLIFE CONCEPTS, LLC d/b/a Downtown Cocktail Room is a  
16 Nevada limited liability company with its principal place of business in Clark County, Nevada.
- 17          32.     WFTLV01, LLC d/b/a Wahoo's Fish Taco is a Nevada limited liability company  
18 with its principal place of business in Clark County, Nevada.
- 19          33.     WFTLV02, LLC d/b/a Wahoo's Fish Taco is a Nevada limited liability company  
20 with its principal place of business in Clark County, Nevada.
- 21          34.     WFTLV04, LLC d/b/a Wahoo's Fish Taco is a Nevada limited liability company  
22 with its principal place of business in Clark County, Nevada.
- 23          35.     WFTLV05, LLC d/b/a Wahoo's Fish Taco is a Nevada limited liability company  
24 with its principal place of business in Clark County, Nevada.
- 25          36.     WFTLV06, LLC d/b/a Wahoo's Fish Taco is a Nevada limited liability company  
26 with its principal place of business in Clark County, Nevada.
- 27          37.     BOGEYS LLC d/b/a Bogeys West is a Nevada limited liability company with its  
28 principal place of business in Clark County, Nevada.

- 1 38. Stephen F. Sisolak is the Governor of Nevada.  
2 39. Barbara K. Cegavske is the Secretary of State of Nevada.  
3 40. Scott W. Anderson is the Chief Deputy Secretary of State of Nevada.

4 **II. JURISDICTION AND VENUE**

5 41. This Court has jurisdiction over this matter pursuant to NRS 14.065, 30.030, and  
6 34.160.

7 42. Venue is proper in the Eighth Judicial District Court for the State of Nevada because  
8 the Plaintiffs' causes of action, or some part thereof, arose in Clark County. NRS 13.020.

9 **III. SUMMARY OF THE ACTION**

10 43. On July 10, 2020, Governor Sisolak issued Declaration of Emergency Directive 027  
11 ("Directive 27"), which effectively forced the closure of many bars and taverns throughout the State  
12 and put thousands of Nevadans out of work. This action was taken without regard to (1) recent  
13 reports from OSHA, the Clark County Business License Department, and the Gaming Control  
14 Board demonstrating that the vast majority of bars (and all of the Plaintiffs/Respondents in this  
15 case) were fully compliant with all Phase Two reopening procedures and (2) a complete absence of  
16 evidence that sitting at a bar top or at a table within the bar area increases the likelihood of  
17 contracting COVID-19 so long as the bar or tavern complies with all of the Phase Two  
18 requirements. Accordingly, Plaintiffs/Respondents ask the Court to:

- 19 (a) Declare that Sections 5 and 6 of Directive 27 are invalid and unenforceable  
20 against bar and tavern owners who are compliant with the Phase Two  
21 requirements related to social distancing and face coverings;  
22 (b) Enjoin enforcement of the Governor's arbitrary and capricious action; and  
23 (c) Order Governor Sisolak to amend Directive 27 to rescind sections 5 and 6,  
24 and allow bars and taverns to resume operating under Phase Two of the  
25 Nevada's Reopening Response Plan.

26 **IV. FACTUAL ALLEGATIONS**

27 **A. Declaration of Emergency and Emergency Directives**

28 44. Plaintiffs/Petitioners each operate bars and taverns in the State of Nevada.

1 45. Nevada’s bars and taverns collectively employ thousands of Nevada citizens.

2 46. On March 12, 2020, in response to the COVID-19 pandemic, Governor Sisolak  
3 issued a Declaration of Emergency For COVID-19 (“Declaration of Emergency”), which will  
4 remain in effect until the Chief Medical Officer notifies Governor Sisolak that the health event has  
5 been abated and the Governor issues an order terminating the emergency.<sup>1</sup>

6 47. Pursuant to NRS 414.060, Governor Sisolak may direct and control the conduct of  
7 the general public and the movement and cessation of movement of pedestrians and vehicular  
8 traffic during, before, and after exercises or an emergency or disaster; and public meetings or  
9 gatherings.

10 48. Pursuant to NRS 414.070, additional powers are delegated to Governor Sisolak  
11 during the existence of a state of emergency, which include, enforcing all laws and regulations  
12 relating to emergency management and assuming direct operational control of any or all forces,  
13 including, without limitation, volunteers and auxiliary staff for emergency management in the State;  
14 providing for and compelling the evacuation of all or part of the population from any stricken or  
15 threatened area or areas within the State and to take such steps as are necessary for the receipt and  
16 care of those persons; and performing and exercising such other functions, powers and duties as are  
17 necessary to promote and secure the safety and protection of the civilian population.

18 49. After issuing the Declaration of Emergency, Governor Sisolak began issuing  
19 emergency directives to address the COVID-19 pandemic.

20 50. On March 20, 2020, Governor Sisolak issued Declaration of Emergency Directive  
21 003<sup>2</sup> (“Directive 3”), which ordered all bars and taverns to cease onsite service (allowing service  
22 only via take-out, drive-through, curbside pickup, or delivery, if applicable).

23 51. On May 7, 2020, Governor Sisolak issued Declaration of Emergency Directive 018  
24 Phase One Reopening Plan<sup>3</sup> (“Directive 18”), which allowed bars and taverns licensed to serve food

25 <sup>1</sup> Available at [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-12\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/).

26 <sup>2</sup> Available at [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-20\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_003\\_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-19_Declaration_of_Emergency_Directive_003_(Attachments)/) (see Section 3).

27 <sup>3</sup> Available at [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-05-07\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_018\\_-\\_Phase\\_One\\_Reopening\\_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-05-07_-_COVID-19_Declaration_of_Emergency_Directive_018_-_Phase_One_Reopening_(Attachments)/) (see Section 17).



1 to resume onsite dining subject to certain social distancing restrictions. However, bar tops and bar  
2 areas were required to remain closed to customers. Additionally, bars and taverns that were not  
3 licensed to serve food remained closed to onsite service.

4 52. On May 28, 2020, Governor Sisolak issued Emergency Directive 021 – Phase Two  
5 Reopening Plan<sup>4</sup> (“Directive 21”). Directive 21 provided that bars and taverns (and other similar  
6 businesses) could re-open to the public so long as certain precautions were followed. In particular,  
7 Directive 21 provided that bars and taverns could allow customers to “sit at and be served at bar  
8 tops” so long as “bar top seating is limited such that barstools are spaced a minimum of six feet  
9 apart from other barstools of other customers not in the same party.” (See Section 25 of Directive  
10 21.) Directive 21 took effect on May 29, 2020 and was to remain in effect through June 30, 2020,  
11 unless terminated or extended by a subsequent Directive.

12 53. Beginning in late June 2020, Nevada began experiencing increased COVID-19 cases  
13 and hospitalizations.

14 54. On June 24, 2020, Governor Sisolak issued Declaration of Emergency Directive  
15 024<sup>5</sup> (“Directive 24”) mandating that individuals wear face coverings in public spaces. It requires  
16 that businesses “ensure that all patrons, customers, patients, or clients utilize face coverings, subject  
17 to the guidelines that shall be promulgated pursuant to this Directive, including prohibiting persons  
18 without face coverings from entering the premises.” Directive 24 took effect at 11:59 p.m. on  
19 Thursday, June 25, 2020 and remains in effect.

20 55. On June 29, 2020, Governor Sisolak issued Declaration of Emergency Directive  
21 026<sup>6</sup> (“Directive 26”) extending Phase Two of Nevada’s Reopening Plan until through July 31,  
22 2020 at 11:59 pm, unless terminated or extended by a subsequent Directive. It remains in effect.  
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25 <sup>4</sup> Available at [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-05-28\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_021\\_-\\_Phase\\_Two\\_Reopening\\_Plan\\_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-05-28_-_COVID-19_Declaration_of_Emergency_Directive_021_-_Phase_Two_Reopening_Plan_(Attachments)/) (see Sections 25 and  
26 26).

27 <sup>5</sup> Available at [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-06-24\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_024\\_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-06-24_-_COVID-19_Declaration_of_Emergency_Directive_024_(Attachments)/).

28 <sup>6</sup> Available at [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-06-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_026/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-06-29_-_COVID-19_Declaration_of_Emergency_Directive_026/).

1           56.     On July 9, 2020, Governor Sisolak held a press conference announcing, among other  
2 things, that he would be issuing a new emergency order closing bars and taverns that do not serve  
3 food effective July 11, 2020.

4           57.     At the press conference, Governor Sisolak, stated that bars and taverns were being  
5 targeted—as opposed to casinos, restaurants, or other establishments where people congregate—for  
6 the following reasons:

- 7           (a)     “COVID can easily spread when people are congregating for long periods of  
8 time, like inside a bar.”
- 9           (b)     “In [other] states where we have seen significant spikes such as Arizona,  
10 Texas, and Florida, they’ve all taken actions to rollback bars.”
- 11          (c)     “Recently, Dr. Fauci, the U.S. top infectious disease expert, advised that  
12 congregating in bars poses a significant risk and is one [of] the most  
13 dangerous things people could do . . . .”
- 14          (d)     “Additionally, I’m concerned because based on our inspection, thus far,  
15 fewer than half of the bars that OSHA inspectors have visited have been  
16 found to be in compliance.”

17          58.     On July 10, 2020, Governor Sisolak issued Declaration of Emergency Directive 027<sup>7</sup>  
18 (“Directive 27”), which rescinded certain sections of Directive 21, including those related to bars  
19 and taverns.

20          59.     Directive 27 rescinded Section 25 of Directive 21, and ordered that:

21                 Restaurants and food establishments, and bars, pubs, taverns,  
22 breweries, distilleries, and wineries licensed to serve food in a  
23 restaurant-type setting, whether or not in a restricted or nonrestricted  
24 gaming establishment, shall operate under the Phase One conditions set  
25 forth in Section 17 of Directive 018, as amended above, when located  
26 in a county with an Elevated Disease Transmission and according to  
27 the criteria published by the Department of Health and Human  
Services. ***Bar tops and bar areas in any establishment in a county  
with an Elevated Disease Transmission and according to the criteria  
published by the Department of Health and Human Services shall be  
closed to customers,*** but bar beverages may be served at tables for

28 <sup>7</sup> Attached as Exhibit 1, available at [http://gov.nv.gov/News/Emergency\\_Orders/2020/2020-07-10\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_027\\_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_(Attachments)/).

1 onsite consumption. Customers must only be served via table services  
2 and may not order from bar top areas.

3 (Emphasis added). Although, restaurants, bars, and taverns that are licensed to serve food are  
4 allowed to continue operations (subject to strict social distancing procedures), they must cease  
5 serving customers at the bar or seating customers in the bar area (i.e. high tops).

6 60. Directive 27 also rescinded Section 25 of Directive 21, and ordered that:

7 Bars, pubs, taverns, breweries, distilleries, and wineries in a county  
8 with an Elevated Disease Transmission, and according to the criteria  
9 published by the Department of Health and Human Services, not  
10 licensed to serve food shall close and remain closed as required by  
11 Section 18 of Directive 18, expanded to include these same  
12 establishments located in restricted or nonrestricted gaming  
13 establishment, while offering curbside delivery and home delivery  
14 where permitted by local code or ordinance, as outlined in the same  
15 section of Directive 18. In nonrestricted gaming establishments, this  
16 Section shall not be interpreted to prohibit employees from making  
17 drinks behind the bar top or to prohibit cocktail servers from collecting  
18 and distributing such drinks to patrons seated at tables, machines, etc.

14 Therefore, bars and taverns that are not licensed to serve food were ordered to close for onsite  
15 service and are again limited to offering service by take-out, drive-through, curbside pickup, or  
16 delivery, if applicable.

17 61. Gaming machines at most bars and taverns are located on bar tops or bar areas.

18 62. Most bars and taverns are reliant on gaming to remain economically viable—  
19 especially with current limits on capacity contained in Governor Sisolak’s Directives.

20 63. Even if a bar or tavern is licensed to serve food (and can therefore remain open for  
21 onsite service), Section 5 of Directive 27 prohibits customers from accessing gaming machines  
22 located on bar tops or bar areas.

23 **B. Business Inspections**

24 64. Since Directive 24 became effective on June 24, 2020, businesses have been subject  
25 to inspections by multiple agencies, including the Division of Industrial Relations’ Nevada  
26 Occupational Safety and Health Administration (OSHA), the Clark County Business License  
27 Department, and the Gaming Control Board.

1           65.     Plaintiffs/Petitioners each are in compliance with the reopening requirements and  
2 none is currently subject to a citation for violations.

3           66.     Beginning on July 1, 2020, OSHA began increased inspections to determine whether  
4 businesses were complying with the reopening requirements. Of the 347 businesses observed on  
5 July 1, 79.8% were in compliance. Businesses in northern Nevada have a cumulative compliance  
6 rate of 84.3%, while businesses in southern Nevada were found to have a 75% compliance rate.

7           67.     Between June 24, 2020 and July 2, 2020, OSHA conducted observations in “gaming  
8 establishments, bars, restaurants, casino hotels, gyms, hair and nail salons, automobile sales and  
9 maintenance establishments, grocery stores, home improvement stores, clothing stores and other  
10 locations where large groups of people may be congregating for longer periods of time, which can  
11 lead to a heightened risk of spreading COVID-19.” During that time, it calculated an overall  
12 business compliance rate of 85% in northern Nevada and 65% in southern Nevada and identified  
13 the business sectors with the highest rates of non-compliance:

- 14           (a)     Home improvement stores—61% noncompliance;
- 15           (b)     Bars—48% noncompliance;
- 16           (c)     Grocery stores—40% noncompliance; and
- 17           (d)     Casino hotels—33% noncompliance.

18           68.     However, on July 3, 2020, OSHA conducted field observations at casino hotel pools,  
19 a water park, bars, and gaming floors and found an overall compliance rate of 82% in northern  
20 Nevada and 75% in southern Nevada. Specifically, it noted the following compliance rates:

- 21           (a)     Water park—not in compliance;
- 22           (b)     Casino hotel pools—40% compliance;
- 23           (c)     Bars—80% compliance; and
- 24           (d)     Casino hotel gaming floors—80% compliance.

25           69.     On July 6, 2020, OSHA observed an additional 169 businesses and found an overall  
26 compliance rate of 89% in northern Nevada and 79% in southern Nevada, including:

- 27           (a)     Convenience stores—74% compliance;
- 28           (b)     Pharmacies—82% compliance;

- 1 (c) General retail—87% compliance;
- 2 (d) Restaurants—93% compliance; and
- 3 (e) Automobile sales and maintenance—100% compliance.

4 70. During the period of July 6 through 8, Nevada OSHA officials conducted 56 follow  
5 up visits to businesses that were previously noncompliant and found that 50 of those businesses had  
6 taken the appropriate measures to come in compliance, a compliance rate of 89%.

7 71. Between June 26, 2020 and July 10, 2020, Clark County business license agents  
8 conducted inspections of more than 1,600 businesses in unincorporated Clark County. It issued a  
9 Notice of Violation to 39 businesses.<sup>8</sup> ***None of the cited businesses was a bar or tavern.***

10 72. Additionally, the Gaming Control Board has conducted inspections of its licensees.  
11 Since June 4, 2020, the Enforcement Division of the Gaming Control Board has conducted 1,453  
12 inspections and observations of nonrestricted licensees and 6,008 inspections and observations of  
13 restricted licensees. It has opened 111 regulatory cases statewide.

14 73. Despite overwhelming evidence that the vast majority of bars and taverns are in  
15 compliance with the reopening mandates pertaining to social distancing and face coverings,  
16 Governor Sisolak has singled out this particular group of businesses in Directive 27.

17 74. To justify this order, Governor Sisolak cites statistics from inspections conducted in  
18 the first few days after ordering face coverings. While only 52% of bars were observed to be  
19 compliant at that time, high rates of non-compliance were also observed at home improvement  
20 stores, grocery stores, and casino hotels. In fact, only 39% of home improvement stores were  
21 compliant.

22 75. In reality, the bar industry quickly came into compliance. By July 3, 2020, OSHA  
23 found that 80% of bars were in compliance—the same compliance percentage observed on the  
24 gaming floor at casino hotels. At the same time, Wet ‘n Wild was found to be non-compliant and  
25 pools at casino-hotels were only 40% compliant.

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28 <sup>8</sup> Attached as Exhibit 2, *available at* <http://www.clarkcountynv.gov/public-communications/news/Pages/Names-of-Businesses-Penalized-for-Not-Complying-with-Governor's-COVID-19-Mandates-Released.aspx>.

1 76. Despite the available evidence showing compliance by bars and taverns, Directive  
2 27 unfairly and unlawfully singles them out for closure. Notably, it does not close home  
3 improvement stores, water parks, casino floors, or casino pools, or other businesses found to have  
4 similar (or more serious) compliance issues.

5 77. Furthermore, there is no evidence that continued operations of bars and taverns in  
6 Nevada that are compliant (like Plaintiffs/Petitioners) with the social distancing and face covering  
7 provisions set forth in Directives 21 and 24 are disproportionately contributing to the spread of  
8 COVID-19.

9 78. Finally, to the extent that specific businesses are non-compliant, Directives 21 and  
10 27 authorize all local, city, and county governments, and state agencies to engage in enforcement  
11 activities, which include, but are not limited to, “suspending licenses, revoking licenses, or issuing  
12 penalties for violating business, professional, liquor, tobacco, or gaming licenses issued by the local  
13 jurisdiction for actions that jeopardize the health, safety, or welfare of the public; conduct which  
14 may injuriously affect the public health, safety, or welfare; conduct that may be detrimental to the  
15 public peace, health, or morals; or any other applicable ordinance or requirement for such a  
16 license.”

## 17 V. CLAIMS FOR RELIEF

### 18 A. First Claim for Relief: Equal Protection Violation

#### 19 (Article 4, Section 21 of the Nevada Constitution)

20 79. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained  
21 in all previous paragraphs, inclusive.

22 80. Sections 5 and 6 of Directive 27 treat bars and taverns that are fully compliant with  
23 the Phase Two reopening requirements differently than other, similarly situated, non-essential  
24 businesses (i.e. industries that have similar (or worse) levels of compliance are not subject to  
25 similar restrictions).

26 81. The disparate treatment of bars and taverns is unreasonable because there is no  
27 rational basis for treating bars and taverns differently than other, similarly situated, non-essential  
28 businesses:

- 1 (a) There is no evidence that the increase in the number of COVID-19 in Nevada  
2 cases is attributable to individuals patronizing bars and taverns.  
3 (b) There is no evidence that sitting at a bar top or at a table within the bar area  
4 increases the likelihood of contracting COVID-19 so long as the bar or tavern  
5 complies with all of the Phase Two requirements.

6 **B. Second Claim for Relief: Substantive and Procedural Due Process Violation**  
7 **(Article 1, Section 8 of the Nevada Constitution)**

8 82. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained  
9 in all previous paragraphs, inclusive.

10 83. Article 1, Section 8, Subsection 2 of the Nevada Constitution provides that “no  
11 person shall be deprived of life, liberty, or property, without due process of law.”

12 84. Plaintiffs/Petitioners each operate a bar and/or tavern, which requires a business  
13 license, liquor license, and/or gaming license—all of which are personal property and grant the  
14 holder certain rights and privileges.

15 85. Sections 5 and 6 of Directive 27 arbitrarily and capriciously subject bars and taverns  
16 to full or partial closure, which fundamentally impairs the rights and privileges granted by their  
17 licenses.

18 86. Plaintiffs/Petitioners are without any meaningful procedure for challenging Directive  
19 27’s restrictions on bars and taverns, either pre- or post-deprivation.

20 87. Directive 27 also threatens Plaintiffs/Petitioners with various civil penalties,  
21 including fines and loss of their license(s) for its violation.

22 88. Defendants/Respondents’ conduct has caused Plaintiffs/Petitioners to suffer a  
23 deprivation of their constitutional rights.

24 89. Defendants/Respondents’ arbitrary and harmful conduct is shocking to the  
25 conscience and offensive to the community’s sense of fair play and decency.

26 **C. Second Claim for Relief: Declaratory Judgment**

27 90. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained  
28 in all previous paragraphs, inclusive.

1 91. Plaintiffs/Petitioners contend that Sections 5 and 6 of Directive 27 are unlawful,  
2 arbitrary, capricious, clearly erroneous, and in excess of Defendants/Respondents' authority.

3 92. The parties' dispute presents an actual justiciable controversy.

4 93. The Plaintiffs/Petitioners request a declaratory judgment stating that Sections 5 and  
5 6 of Directive 27 are invalid and cannot be enforced against bar and tavern owners who are  
6 compliant with the social distancing and face covering requirements because those sections  
7 arbitrarily and capriciously impair the rights and privileges of these bar and tavern owners.

8 **D. Third Claim for Relief: Injunctive Relief**

9 94. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained  
10 in all previous paragraphs, inclusive.

11 95. As set forth above, Sections 5 and 6 of Emergency Directive 027 are unlawful,  
12 clearly erroneous, arbitrary, capricious, and in excess of Defendants/Respondents' authority.

13 96. As a result of Defendants/Respondents' unlawful, clearly erroneous, arbitrary, and  
14 capricious actions, Plaintiffs/Petitioners have each suffered and continue to suffer irreparable harm  
15 to their business (and the personal interests of their owners) with no adequate remedy at law.

16 97. Defendants/Respondents will suffer no harm if the relief is granted because there is  
17 no evidence that allowing Nevada's bars and taverns which are fully compliant with the Phase Two  
18 Reopening requirements to continue to provide onsite services creates an unreasonable risk of  
19 spreading COVID-19. Furthermore, Directives 21 and 24 already provide that any bar or tavern  
20 that violates the requirements can be cited and closed.

21 98. The Plaintiffs/Petitioners are likely to succeed on the merits in this litigation.

22 99. The public interest favors Plaintiffs/Petitioners because the actions and decisions of  
23 Defendants/Respondents should comply with the Nevada Constitution and should not be arbitrary  
24 and capricious.

25 100. Plaintiffs/Petitioners are entitled to preliminary injunctive relief, and after a trial on  
26 the merits, permanent injunctive relief, ordering Defendants/Respondents to Amend Directive 27 by  
27 rescinding Sections 5 and 6.

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**E. Fourth Claim for Relief: Petition for Writ of Mandamus**

101. Plaintiffs/Petitioners reallege and incorporate by reference the allegations contained in all previous paragraphs, inclusive.

102. As set forth above, Defendants/Respondents have engaged in an arbitrary and capricious exercise of discretion in issuing and enforcing Declaration 27.

103. There is no plain, speedy, and adequate remedy in the ordinary course of law to correct Defendants'/Respondents' arbitrary and capricious acts and exercise of discretion.

104. Therefore, Plaintiffs/Petitioners petition this Court to issue a writ of mandamus to Defendants/Respondents to amend Directive 27 by rescinding Sections 5 and 6.

**VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs/Petitioners pray for the following relief:

1. Preliminary injunctive relief, and after a trial, permanent injunctive relief, ordering Defendants/Respondents to amend Directive 27 by rescinding Sections 5 and 6.

2. A declaratory judgment stating that Sections 5 and 6 of Directive 27 are invalid as to bar and tavern owners who are compliant with the social distancing and face covering requirements of Phase Two because they arbitrarily and capriciously impair the rights and privileges of bar and tavern owners;

3. A writ of mandamus compelling Defendants/Respondents compelling them to amend Directive 27 by rescinding Sections 5 and 6; and

4. For an award of Plaintiffs'/Respondents' costs and fees incurred in this matter;

5. For such other and further relief as is deemed proper and appropriate.

DATED this 12<sup>th</sup> day of July, 2020.

BAILEY ❖ KENNEDY  
By: /s/ Dennis L. Kennedy  
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