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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

SARANNE RICCIO; UNCORKED WINE SHOP & TASTING ROOM, LLC; FICTITOUS PLAINTIFFS #1-25,	)	
Plaintiffs,	)	Case No. _____
v.	)	
Dr. SCOTT HARRIS, in his official capacity as State Health Officer and in his individual capacity; KAY IVEY, in her official capacity as Governor and in her individual capacity;	)	**JURY TRIAL REQUESTED**
Defendants.	)	

COMPLAINT

COME NOW the Plaintiffs, **Saranne Riccio** and **Uncorked Wine Shop & Tasting Room, LLC,** and Fictitious Plaintiffs #1-25, by and through their undersigned counsel, and bring this action under Article I, § 13, of the Alabama Constitution of 1901, and 42 U.S.C. § 1983, challenging the orders of State Health Officer **Scott Harris** and Governor **Kay Ivey** that they issued during the COVID-19 pandemic.

PARTIES

1. Saranne Riccio is an individual over the age of nineteen (19) years, is a resident of Madison County, Alabama, and has been residing in Madison County for all times relevant herein.

2. Uncorked Wine Shop & Tasting Room, LLC ("Uncorked Providence") is an LLC that has its principal place of business in Huntsville, AL.

3. Fictitious Plaintiffs #1-25 (hereinafter "Fictitious Plaintiffs") are plaintiffs who have suffered similar injuries to Riccio and Uncorked Providence (hereinafter "Plaintiffs") because of Defendants' COVID-19 orders.

4. Defendant Kay Ivey is the Governor of the State of Alabama, resides in Montgomery, and at all relevant times had issued proclamations affecting the entire State.

5. Defendant Scott Harris is the State Health Officer who, at all relevant times, had been issuing orders that affect the entire State.

FACTUAL BACKGROUND

6. Plaintiff Saranne Riccio owns Uncorked Providence, a wine-tasting shop that was located on leased property in Huntsville, AL.

7. Uncorked Providence, which was formed in 2018, not only sold wine to customers, but it also provided customers with the opportunity to taste wine in the shop.

8. Approximately 70% of the gross profit from the business came from the wine-tasting experience inside the shop.

9. Business was going well until COVID-19 hit Alabama in March of 2020.

10. Almost immediately, Dr. Harris issued orders that restricted Alabamians' liberties to work and to assemble for the purpose of trying to combat COVID-19. A copy of each of his orders affecting Plaintiffs from March 19, 2020 until June 30, 2020, is attached as Exhibit A.[1]

11. On March 19, 2020, Dr. Harris issued an order forbidding "all restaurants, bars, breweries, *or similar establishments*" from allowing "on-premises consumption of food or drink." Ex. A at 3 (emphasis added). It also forbade "all gatherings of 25 persons or more" and

[1] Plaintiffs have provided Bates numbers for each exhibit for the Court's convenience and will cite to them throughout this Complaint, omitting 0's from the Bates numbers if they are unnecessary.

"all gatherings of any size that cannot maintain a consistent six-foot distance between persons[.]" *Id.* at 001.

12. This order severely impacted Plaintiffs' ability to make money, since 70% of their gross profit relied on wine-tasting inside the shop.

13. Beginning on March 27, 2020, Dr. Harris deemed certain businesses "nonessential" and forced them to close for a period of time. Ex. A at 10. Regardless of whether one's business was "essential" or not, Dr. Harris forbade "all non-work related gatherings of 10 persons or more, or non-work related gatherings of any size that cannot maintain a six-foot distance between persons[.]" *Id.* at 9-10. The later restriction further impacted Plaintiffs' ability to conduct their business.

14. The worst of the essential/nonessential distinction came on April 3, 2020, when Dr. Harris issued the "Stay at Home Order" that lasted until April 28, 2020. Ex. A at 19-29.

15. The Stay at Home Order required all persons to remain at home and refrain from going to work unless they were among an enumerated group of exceptions. *See* Ex. A at 19-29.

16. One of the exceptions was for "Restaurants and bars." Ex. A at 23.

17. Unlike Dr. Harris's March 19th order, there was no language indicating that "similar establishments," such as wine-tasting shops, could remain open as well. *Compare* Ex. A at 3 (listing "all restaurants, bars, breweries, or similar establishments") *with* Ex. A at 23 (listing "Restaurants and bars").

18. Even when the Stay at Home Order was lifted on April 28, 2020, Dr. Harris continue to forbid dine-in experiences in restaurants and similar establishments. Ex. A at 35.

19. On May 8, 2020, Dr. Harris issued a "Safer at Home Order" that finally allowed restaurants and similar establishments to allow dine-in experiences again. Ex. A at 43. However,

multiple restrictions applied. For instance, no more than 8 people in a party could be seated at the same table. *Id.* Six-foot distances had to be maintained "between people seated at different tables, booths, chairs, or stools." *Id.* Furthermore, "all non-work related gatherings of any size that [could] not maintain a consistent six-foot distance between persons from different households [were] prohibited." *Id.* at 38.

20. These orders severely impacted Plaintiffs' ability to operate their business.

21. On June 30, 2020, Governor Ivey recognized that Dr. Harris's ability to issue orders on his own authority might be expiring. Therefore, she began issuing emergency orders pursuant to the Alabama Emergency Management Act. Essentially, Dr. Harris would write the orders as to what the restrictions would be, and then Governor Ivey would issue an order adopting Dr. Harris's order as her own. A copy of each of these joint orders that affected Plaintiffs is attached as Exhibit B.[2]

22. During this time, the Governor never called the Legislature back for a special session to address what public health measures, if any, should be taken to combat COVID-19.

23. Having converted Dr. Harris's orders into her own with the stroke of a pen, Governor Ivey continued the restrictions on indoor dining and gatherings (described in Paragraph 19 above) that Dr. Harris was ordering for the remainder of 2020.

24. On January 21, 2021, Dr. Harris and Governor Ivey finally permitted "people seated at different booths or tables" to be "seated closer than six feet apart" if they were "separated by solid partitions, as large as practicable, that are impermeable to respiratory droplets and aerosols." Ex. B at 109. However, all work-related gatherings where people could not maintain a constant 6-foot distance was still prohibited. *Id.* at 102.

[2] This Exhibit uses the same Bates numbering system that Exhibit A did.

25. When the Legislature was in session in 2021, Governor Ivey was asked about two bills that would let the People's representatives have a say in what COVID measures should be taken. Shockingly, Governor Ivey replied, "[I]n an emergency, you don't need a herd of turtles gathering to make an emergency decision." Jeff Poor, *Alabama Policy Institute: Ivey "Herd of Turtles" Remarks Dismissing Legislature "A Step Too Far,"* Yellowhammer News (Feb. 22, 2021), https://yellowhammernews.com/alabama-policy-institute-ivey-herd-of-turtles-remarks-dismissing-legislature-a-step-too-far.

26. Former State Senator Phil Williams, the Chief Policy Officer of the Alabama Policy Institute ("API"), responded, "For the governor to so cavalierly dismiss the legislative branch of government in that way is a step too far…. For a year she has had sole reign in Montgomery to shut down businesses, extend legislation that was not hers to extend, and spend CARES Act funds on government instead of the private sector. The power to call the legislature into special session was vested in her office, but she chose not to do so. Now we know that it was because she does not deem them as necessary to the processes of governance." Press Release, Alabama Policy Institute Responds to Governor Ivey Insulting the Alabama Legislature, Alabama Policy Institute (Feb. 22, 2021), https://alabamapolicy.org/2021/02/22/alabama-policy-institute-responds-to-governor-ivey-insulting-the-alabama-legislature. API's CEO Caleb Crosby likewise said, "The comments just made by the governor cast doubt upon her willingness to even sign these two significant pieces of legislation…. The people of this great state need to know that their own voices are being heard in the halls of government during this pandemic. The most likely way for that to occur is for their senators and representatives to be given a voice in the matter." *Id.*

27. The efforts in 2021 to limit the Executive Branch's power during an emergency failed, with the Alabama Policy Institute noting that "[m]any legislators, it appears, do not want to rebalance the balance of powers." Parker Snider, *Legislative Session: The Final Week at the State House*, Alabama Policy Institute (May 19, 2021), https://alabamapolicy.org/2021/05/19/legislative-session-the-final-week-at-the-state-house.

28. On April 7, 2021, Dr. Harris and Governor Ivey released their first "Safer Apart Order." Ex. B at 153-58. This order finally lifted the restrictions on Plaintiffs that had injured their business for over a year.

29. Nevertheless, Defendants had significantly hindered Plaintiffs from operating their business for over a year, which had severe economic consequences for Plaintiffs.

30. Plaintiffs were able to apply for a PPP loan and received one.

31. However, due to the restrictions of the program, the PPP money could be used only to compensate Uncorked Providence's employees.

32. Riccio was unable to pay herself through the PPP loan.

33. Because Plaintiffs' business relied so heavily on the ability of people to sit in the shop and enjoy the wine-tasting experience, it was unable to make a profit for over a year.

34. Plaintiffs lost $36,450 during 2020 and over $18,230 during 2021 because of Defendants' orders, totaling $54,680.

35. A recent study from Johns Hopkins University reveals that the lockdowns had "little to no effect" on the COVID-19 pandemic, that the lockdowns "imposed enormous economic and social cost" to businesses, and were "ill-founded and should be rejected as a pandemic policy instrument." Tim Meads, *John Hopkins Study: Lockdowns Had 'Little to No Effect on COVID-19 Mortality' but Had 'Devastating' Effects on Society*, The Daily Wire (Feb.

1, 2022), https://www.dailywire.com/news/johns-hopkins-study-lockdowns-had-little-to-no-effect-on-covid-19-mortality-but-had-devastating-effects-on-society.

36. Governor Ivey herself admitted that it was a mistake to close businesses when COVID-19 hit and that it was wrong to label some businesses as "nonessential." Lydia Nusbaum, *Ivey: It Was a "Mistake" to Close Businesses in the Spring*, WSFA (Dec. 15, 2020), https://www.wsfa.com/2020/12/15/ivey-it-was-mistake-close-businesses-spring.

37. While COVID-19 was undoubtedly a major problem, Defendants' "mistake" ultimately caused Uncorked Providence to close.

38. Plaintiffs were narrowly able to avoid bankruptcy by assigning Uncorked Providence's lease to another tenant and selling most of its business property to a restaurant chain that does business in the Huntsville area.

39. As with all assignments, Uncorked Providence is not completely free from liability if the new tenant fails to uphold its obligations under the lease.

40. Uncorked Providence still exists as a business entity but is in the wind-up process.

41. Fictitious Plaintiffs #1-25 have suffered similar injuries to Riccio and Uncorked Providence.

JURISDICTION AND VENUE

42. This Court has jurisdiction over this action pursuant to Art. I, § 13 of the Alabama Constitution of 1901, and 42 U.S.C. § 1983.

43. Venue is proper pursuant to Ala. Code 1975 § 6-3-7.

44. Plaintiffs have standing because Alabama Attorney General Steve Marshall announced that, while he hoped it would not come to this, state and local police would enforce the orders. *See* Caroline Beck & Todd Stacy, *Ivey Orders Residents to Stay Home; Marshall*

Says State Will Enforce, WBRC (Apr. 4, 2020), https://www.wbrc.com/2020/04/04/ivey-orders-residents-stay-home-marshall-says-state-will-enforce. This stands in contrast to Defendants' mask orders (which are not at issue in this case), which appear to have neither been enforced nor had a credible threat of enforcement. *See Munza v. Ivey*, No. 1200003, 2021 Ala. LEXIS 20 (Ala. Mar. 19, 2021) (affirming dismissal of challenge to mask mandate due to lack of enforcement or credible threat of enforcement).

COUNT I – *ULTRA VIRES* (GOV. IVEY'S PROCLAMATIONS)

45. Plaintiff reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 44.

46. Article III, § 42 of the Alabama Constitution of 1901 provides:

> (a) The powers of the government of the State of Alabama are legislative, executive, and judicial.
>
> (b) The government of the State of Alabama shall be divided into three distinct branches: legislative, executive, and judicial.
>
> (c) To the end that the government of the State of Alabama may be a government of laws and not of individuals, and except as expressly directed or permitted in this constitution, the legislative branch may not exercise the executive or judicial power, the executive branch may not exercise the legislative or judicial power, and the judicial branch may not exercise the legislative or executive power.

47. Thus, even if the Legislature wanted to authorize the Governor to exercise legislative power, even under emergency circumstances, it could not do so without violating the Alabama Constitution.

48. James Madison, drawing on Montesquieu, explained the importance of separating the legislative and executive powers in Federalist 47: "'[T]here can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates ….' The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning.

'When the legislative and executive powers are united in the same person or body,' says he, 'there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *enact* them in a tyrannical manner.'" *The Federalist* No. 47 (James Madison) 325-26 (J.E. Cooke, ed., 1961).

49. The Alabama Supreme Court has repeatedly affirmed the principle that the Legislature cannot give the executive branch legislative power. *See, e.g.*, *Monroe v. Harco, Inc.*, 762 So. 2d 828, 831 (Ala. 2000) ("The legislature cannot delegate its power to make a law") (citations, alterations, and quotation marks omitted); *Folsom v. Wynn*, 631 So. 2d 890, 894 (Ala. 1993) ("It is settled law that the Legislature may not constitutionally delegate its powers, whether the general power to make law or the powers encompassed within that general power"); *Cagle v. Qualified Electors of Winston*, 470 So. 2d 1208 (Ala. 1985) ("the power vested in the legislature to make laws cannot be delegated").

50. The Alabama Supreme Court has recognized the following test to distinguish between the executive branch exercising legislative power and the executive branch merely administering the law as it stands:

> The true test and distinction whether a power is strictly legislative, or whether it is administrative, and merely relates to the execution of the statute law, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution to be exercised under and in pursuance of the law. The first cannot be done. To the latter, no valid objection can be made.

Monroe, 762 So. 2d at 828 (citations and quotation marks omitted).

51. In issuing her proclamations, Governor Ivey relied on the Alabama Emergency Management Act of 1955, Ala. Code 1975 §§ 31-9-1 et seq. *See, e.g.*, Ex. B at 1 (citing Ala. Code 1975 §§ 31-9-1 et seq.).

52. The Alabama Emergency Management Act, in practical effect, vests the Governor with discretion to decide what the law shall be, not discretion as to how to administer the law.

53. Consequently, her proclamations shutting down "nonessential" businesses were exercises of legislative power instead of executive power.

54. Governor Ivey's exercise of legislative power violates the Alabama Constitution.

55. Governor Ivey's proclamations were issued *ultra vires*.

56. These unconstitutional proclamations substantially injured Plaintiffs.

57. Because the Governor acted beyond her authority and/or under a mistaken interpretation of the law, she is liable in her individual capacity, is not protected by state-agent immunity, *see Ex parte Moulton*, 116 So. 3d 1119, 1131 (Ala. 2013), and owes at least nominal (if not compensatory) damages to Plaintiffs.

COUNT II – *ULTRA VIRES* (DR. HARRIS'S ORDERS)

58. Plaintiffs reiterate and adopt each and every allegation in the preceding paragraphs numbered 1 through 57.

59. Dr. Harris has repeatedly cited § 22-2-2(4), Ala. Code 1975, as the authority upon which he relies to promulgate his mask orders. *See*, *e.g.*, Ex. A at 1.

60. § 22-2-2 reads, in full:

> The State Board of Health shall have authority and jurisdiction:
>
> (1) To exercise general control over the enforcement of the laws relating to public health.
>
> (2) To investigate the causes, modes or propagation and means of prevention of diseases.
>
> (3) To investigate the influence of localities and employment on the health of the people.

> (4) To inspect all schools, hospitals, asylums, jails, theatres, opera houses, courthouses, churches, public halls, prisons, stockades where convicts are kept, markets, dairies, milk depots, slaughter pens or houses, railroad depots, railroad cars, street railroad cars, lines of railroads and street railroads (including the territory contiguous to said lines), industrial and manufacturing establishments, offices, stores, banks, club houses, hotels, rooming houses, residences and other places of like character, and whenever insanitary conditions in any of these places, institutions or establishments or conditions prejudicial to health, or likely to become so, are found, proper steps shall be taken by the proper authorities to have such conditions corrected or abated.
>
> (5) To examine the source of supply, tanks, reservoirs, pumping stations and avenues of conveyance of drinking water, and whenever these waters are found polluted or conditions are discovered likely to bring about their pollution, proper steps shall be taken by proper authorities to improve or correct conditions.
>
> (6) To adopt and promulgate rules and regulations providing proper methods and details for administering the health and quarantine laws of the state, which rules and regulations shall have the force and effect of law and shall be executed and enforced by the same courts, bodies, officials, agents and employees as in the case of health laws, and a quorum, as provided for by the constitution of the Medical Association of the State of Alabama, shall be competent to act.
>
> (7) To exercise supervision and control over county boards of health and over county health officers and county quarantine officers in the enforcement of the public health laws of the state in their respective counties, and whenever any such county board of health, county health officer or county quarantine officer shall fail or refuse to discharge its or his duties, said duties may be discharged by the State Board of Health until proper arrangements are made to insure their discharge by said county board of health or said county health officer or said county quarantine officer, as the case may be.
>
> (8) To act as an advisory board to the state in all medical matters and matters of sanitation and public health.

61. Nothing in this section authorizes Dr. Harris to promulgate a rule requiring every "nonessential" business to shut down, at least not without inspection.

62. Consequently, Dr. Harris issued these orders *ultra vires*.

63. Furthermore, as an Executive Branch official, Dr. Harris was vested with the limited authority to execute the law, but the Alabama Constitution did not vest him with the authority to make law. Thus, his orders were *ultra vires* on constitutional grounds as well.

64. These illegal orders substantially harmed Plaintiffs.

65. Because Dr. Harris acted beyond his authority and/or under a mistaken interpretation of the law, he is liable in his individual capacity, is not protected by state-agent immunity, *see Ex parte Moulton*, 116 So. 3d 1119, 1131 (Ala. 2013), and owes at least nominal (if not compensatory) damages to Plaintiffs.

COUNT III – FAILURE TO COMPLY WITH THE ALABAMA ADMINISTRATIVE PROCEDURES ACT

66. Plaintiff reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 65.

67. The Alabama Administrative Procedures Act, §§ 41-22-1 et seq., establishes procedures by which administrative agencies must promulgate rules in order for them to be valid.

68. Ala. Code 1975 § 41-22-3(9) defines a "rule" as:

> Each agency rule, regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule or by federal statute or by federal rule or regulation.

69. Dr. Harris's directives are certainly statements of general applicability rather than an order directed to a person or class of people.

70. Dr. Harris's directives also "prescribe[] law or policy" because they purport to bind every person in the state of Alabama.

71. Although labeled as "orders," Dr. Harris's directives are really *rules* within the definition of the AAPA. *See Wisconsin Legislature v. Palm*, 2020 WI 42 (Wis. 2020) (holding that state officer's COVID-19 orders were really rules that were required to comply with Wisconsin's administrative procedures act).

72. If a rule does not comply with the AAPA, then it cannot be used against a person. Ala. Code 1975 § 41-22-4(b).

73. Usually, the AAPA requires an agency to give at least 35 days' notice if it intends to adopt a new rule, as well as an opportunity for public comment. § 41-22-5(a)(1) & (a)(2). That was not done in this case.

74. However, "if an agency finds that an immediate danger to the public health, safety, or welfare requires adoption of a rule upon fewer than 35 days' notice ... the agency may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule." § 41-22-5(b). In such a case, "[t]he rule may be effective for a period of not longer than 120 days and shall not be renewable." *Id.*

75. The AAPA also prohibits an administrative agency from promulgating "the same or a substantially similar emergency rule within one calendar year from its first adoption unless the agency clearly establishes it could not reasonably be foreseen during the initial 120-day period that such emergency would continue or would likely reoccur during the next nine months." Ala. Code 1975 § 41-22-5(b).

76. Dr. Harris was required to follow the procedures of the AAPA in order for his rules to be legitimate.

77. Because he has not done so, his orders are illegitimate and could not be used against Plaintiffs.

78. Governor Ivey appeared to recognize that Dr. Harris's authority to renew these emergency orders expired on June 30, 2020. *See* Ex. B at 2. Consequently, she promulgated his orders as her own under the Emergency Management Act in attempt to save them from the AAPA. *Id.* at 1-2.

79. However, as demonstrated in Count I, *supra*, Governor Ivey's attempts to justify her actions under the Emergency Management Act violate the Constitution of Alabama.

80. Thus, Governor Ivey's proclamations cannot save Dr. Harris's orders from failure to comply with the AAPA.

81. Dr. Harris's actions substantially injured Plaintiffs.

82. Because Dr. Harris acted beyond his authority and/or under a mistaken interpretation of the law, he is liable in his individual capacity, is not protected by state-agent immunity, *see Ex parte Moulton*, 116 So. 3d 1119, 1131 (Ala. 2013), and owes at least nominal (if not compensatory) damages to Plaintiffs.

COUNT IV: INVERSE CONDEMNATION (FEDERAL CONSTITUTION)

83. Plaintiff reiterates and adopts each and every allegation in the preceding paragraphs numbered 1 through 82.

84. The Fifth Amendment to the United States Constitution, incorporated against the States through the Fourteenth Amendment, provides in relevant part: "nor shall private property be taken for public use, without just compensation."

85. The United States Supreme Court has held that a "taking" can occur not only through physically taking property but also that a "regulatory taking" can occur if regulations deprive a property owner of their property. *See, e.g., Penn. Coal Co. v. Mahon*, 260 U.S. 393 (1922) (recognizing the regulatory-takings doctrine).[3]

[3] "Similar yet distinct from regulatory takings are consequential takings," in which the government "does not actually possess the owner's property, but prevents him from enjoying the use of his property" by virtue of "government improvements, such a building roads or improving waterways." Michael B. Rappaport, *Originalism and Regulatory Takings: Why the Fifth Amendment May Not Protect Against Regulatory Takings, but the Fourteenth Amendment May*, 45 San Diego L. Rev. 729, 733 (2008). Plaintiffs believe Defendants' actions fit the framework of a regulatory taking better than a consequential taking. However, if this Court disagrees, then

86. The United States Supreme Court has also recognized that a leasehold is a property interest that may be taken through a regulatory taking. *See Alamo Land & Cattle Co. v. Arizona*, 424 U.S. 295 (1975).

87. In this case, Defendants' actions deprived Plaintiffs of their rights to use the shop for wine-tasting experiences, which provided 70% of their revenue.

88. Defendants' actions also cost Uncorked Providence its lease.

89. Defendants' deprivation of Plaintiffs' property rights caused the damages at issue in this case.

90. Defendants never provided just compensation to Plaintiffs.

91. Defendants' actions were unconstitutional under the Fifth and Fourteenth Amendments. Because Plaintiffs allege an inverse-condemnation claim against Defendants in their official capacities, they are not protected by State immunity, and Plaintiffs are due just compensation.

COUNT V: INVERSE CONDEMNTATION (STATE CONSTITUTION)

92. Plaintiffs reiterate and adopt each and every allegation in the preceding paragraphs numbered 1 through 91.

93. Article I, § 23 of the Alabama Constitution of 1901 (emphasis added) provides:

> That the exercise of the right of eminent domain shall never be abridged nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use in the same manner in which the property and franchises of individuals are taken and subjected; *but private property shall not be taken for, or applied to public use, unless just compensation be first made therefor*; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner; provided, however, the legislature may by law secure to persons or corporations the right of way over the lands of other persons or

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Plaintiffs contend that Defendants' actions also constitute a consequential taking, which employs a similar framework as regulatory takings. *See id.*

> corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner; and, provided, that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporations, other than municipal, or for the benefit of any individual or association.

94. In this case, Defendants took Plaintiffs' property by depriving them of their rights of usage and of Uncorked Providence's lease through their orders.

95. Defendants never compensated Plaintiffs for their loss.

96. The Alabama Supreme Court's leading precedent on takings, *Willis v. University of North Alabama*, 826 So. 2d 118 (Ala. 2002), provides that § 23 does not apply if the property is not physically taken. 826 So. 2d at 121. However, *Willis* is distinguishable from the present case. In *Willis*, the property owner claimed that the government's construction of a parking garage blocked his view, which decreased his property's value. *Id.* at 119. Willis therefore did not allege that the State deprived him of his property *rights*, only of its *value*. In this case, Plaintiffs allege that the government deprived them of their rights of usage and of the lease itself. Thus, *Willis* is distinguishable from the present case.

97. In the alternative, if *Willis* is not distinguishable, then the Alabama Supreme Court should overrule it. Plaintiffs obviously make no request for this Court to defy the Alabama Supreme Court's precedents but raise the issue here to preserve it for appeal if necessary.

98. Defendants' actions violated § 23 of the Alabama Constitution. Because Plaintiffs allege an inverse-condemnation claim against Defendants in their official capacities, they are not protected by State immunity, and Plaintiffs are due just compensation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. That this Court award the Plaintiffs compensatory and nominal damages;

B. That this Court award Plaintiffs reasonable attorney fees pursuant to 42 U.S.C. § 1988, Ala. Code 1975 § 18-1A-32, and as otherwise provided by law; and

C. That this Court grant such other and further relief as this Court deems equitable and just.

PLAINTIFF DEMANDS TRIAL BY JURY.

Dated this 19th day of March, 2022.

/s/ Matthew J. Clark
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