

**IN THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

In re: Covid-19 Litigation

Case No. 2020-MR-589

Judge Raylene Grischow

**VERIFIED ANSWER TO FIRST AMENDED VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Defendants Governor JB Pritzker, in his official capacity, and the Illinois Department of Public Health (the “State Parties”) answer the First Amended Verified Complaint For Declaratory Judgment And Injunctive Relief (the “Amended Complaint”) as set forth below. The State Parties deny all allegations contained in section headings and other portions of the Amended Complaint that are not contained within specifically numbered paragraphs of the Amended Complaint. All allegations, if not expressly admitted, are denied.

1. Plaintiff, FoxFire, is a limited liability corporation duly organized pursuant to the laws of the State of Illinois, with its principal office located at 17 W State St., Geneva, Illinois 60134 (“Property”).

ANSWER

The State Parties admit the allegations in Paragraph 1.

2. FoxFire is engaged in the food services industry, operating a fine dining bar and restaurant located in the City of Geneva, County of Kane, State of Illinois.

ANSWER

The State Parties admit the allegations in Paragraph 2.

3. FoxFire, as currently constituted, has been in operation for over 15 years as a proud family-owned restaurant, with Kristopher C. (“KC”) Gulbro and his father, Curtis Gulbro, as the sole owners thereof.

ANSWER

The State Parties lack sufficient knowledge to form a belief as to the allegations in Paragraph 3.

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

ANSWER

The State Parties admit the allegations in Paragraph 4.

5. The Illinois Department of Public Health (the “Department”) is a department of the Illinois State Government specifically tasked with the promotion of health through the prevention and control of disease, among other things. As to Kane County, the local branch of the Department is the Kane County Health Department.

ANSWER

The State Parties admit the Illinois Department of Public Health is a department of the Illinois State Government, and that 20 ILCS 2305/2 states “[t]he State Department of Public Health has general supervision of the interests of the health and lives of the people of the State.”

Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 5.

6. On March 9, 2020, Gov. Pritzker issued a proclamation declaring, as of that date, a “disaster” existed within Illinois as a result of the COVID-19 virus. A copy of Gov. Pritzker's declaration is attached hereto as Exhibit "A," and expressly incorporated herein (hereinafter “COVID DECL”).

ANSWER

The State Parties admit that Section 1 of the Gubernatorial Disaster Proclamation issued on March 9, 2020 stated “a disaster exists within the State of Illinois.” The State Parties further admit that the fifteenth recital of the Gubernatorial Disaster Proclamation issued on March 9, 2020 stated “the circumstances surrounding COVID-19 constitute a public health emergency.” The State Parties further admit that FoxFire purports to have attached a true and correct copy of the Gubernatorial Disaster Proclamation issued on March 9, 2020 to the Amended Complaint. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 6.

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

ANSWER

The State Parties admit that on March 9, 2020 the Governor issued a Gubernatorial Disaster Proclamation that stated “[p]ursuant to the provisions of Section 7 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/7, I find that a disaster exists within the State of Illinois.” The State Parties deny that IEMAA is the sole source of the Governor’s authority to respond to the Covid-19 pandemic or to issue gubernatorial proclamations. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 7.

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

ANSWER

The State Parties admit that 20 ILCS 3305/7 includes the language quoted in Paragraph 8.

9. The corresponding Section 4 of the IEMAA defines a "disaster" as follows:

“Disaster” means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination ***requiring emergency action to avert danger or damage, epidemic, air contamination,*** blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, ***public health emergencies,*** or acts of domestic terrorism. (emphasis added) *20 ILCS 3305/4.*

ANSWER

The State Parties admit that 20 ILCS 3305/4 includes the language quoted in Paragraph 9. The remainder of Paragraph 9 states legal conclusions to which no answer is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 9. To the extent an answer is required, the State Parties deny any and all remaining allegations in Paragraph 9.

10. In COVID DECL, Gov. Pritzker specifically states that the COVID-19 virus is a “novel severe acute respiratory illness,” specifically classifying the virus as a currently existing “public health emergency.” (*See Exhibit "A", pp. 1-2*).

ANSWER

The State Parties admit that the Gubernatorial Disaster Proclamation issued on March 9, 2020 stated “COVID-19 is a novel severe acute respiratory illness.” The State Parties further admit that the fifth recital of the Gubernatorial Disaster Proclamation issued on March 9, 2020 stated “the World Health Organization declared COVID-19 a Public Health Emergency of International Concern . . . and the United States Secretary of Health and Human Services declared that COVID-19 presents a public health emergency.” The State Parties further admit that the fifteenth recital of the Gubernatorial Disaster Proclamation issued on March 9, 2020 stated “the circumstances surrounding COVID-19 constitute a public health emergency under Section 4 of the Illinois Emergency Management Agency Act.” The State Parties further admit that Sections 2 and 3 of the Gubernatorial Disaster Proclamation issued on March 9, 2020 referenced “the present public health emergency.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 10.

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

ANSWER

The allegations in Paragraph 11 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 11. To the extent a response is required, the State Parties admit that the source of the Governor’s authorities may be found in applicable law, including but not limited to the United States Constitution, the Illinois Constitution, and applicable statutes and common law principles. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 11.

12. According to the IEMAA, upon proper proclamation of a “disaster” “the Governor shall have and may exercise for a period not to exceed thirty days,” fourteen (14) subsequently enumerated emergency powers. (*See 20 ILCS 3305/70; See also Exhibit "A", p. 2*).

ANSWER

The allegations in Paragraph 12 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph

12. To the extent an answer is required, the State Parties deny the allegations in Paragraph 12.

13. The emergency powers granted to the Governor under the IEMAA are limited in both duration and scope.

ANSWER

The allegations in Paragraph 13 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph

13. To the extent a response is required, the State Parties admit that the scope of the Governor’s authorities is subject to applicable law, including but not limited to the United States Constitution, the Illinois Constitution, and applicable statutes and common law principles. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 13.

14. Subsequent to COVID DEC1, Gov. Pritzker utilized his emergency powers through the issuance of various executive orders.

ANSWER

The State Parties deny that IEMAA emergency powers are the sole source of the Governor’s authority to respond to the Covid-19 pandemic. The State Parties admit that subsequent to March 9, 2020, the Governor took action in part pursuant to his emergency powers under IEMAA. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 14.

15. Upon the expiration of the initial thirty days under COVID DEC1, on April 1, 2020, Gov. Pritzker issued another disaster proclamation. (*See Exhibit “B,” hereinafter referred to as “COVID DEC2”*).

ANSWER

The State Parties admit that on April 1, 2020, the Governor issued a Proclamation that a disaster existed on that date within the State of Illinois. The State Parties further admit that the fourteenth recital of the Proclamation issued on April 1, 2020 stated “the circumstances surrounding COVID-19 constitute a continuing public health emergency under Section 4 of the Illinois Emergency Management Agency Act.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 15.

16. In COVID DEC2, Gov. Pritzker again stated that the COVID-19 virus is a “novel severe acute respiratory illness,” again classifying such as a currently existing “public health emergency.” (*See Exhibit “B”, pp. 1-2*).

ANSWER

The State Parties admit that the fourth recital of the Proclamation issued on April 1, 2020 stated “COVID-19 is a novel severe acute respiratory illness.” The State Parties further admit that the fourteenth recital of the Proclamation issued on April 1, 2020 stated “the circumstances surrounding COVID-19 constitute a continuing public health emergency under Section 4 of the Illinois Emergency Management Agency Act.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 16.

17. This time, however, Gov. Pritzker concludes that COVID-19 constitutes “a continuing disaster,” and thereby declared a continuation of his authority under the emergency powers of section 7 of the IEMAA. (*Id.*).

ANSWER

The State Parties admit that the fourteenth recital of the Proclamation issued on April 1, 2020 stated “the circumstances surrounding COVID-19 constitute a continuing public health emergency under Section 4 of the Illinois Emergency Management Agency Act.” The State Parties further admit that the Governor’s authority to use emergency powers to respond to Covid-19

continued in part on the basis of the Proclamation issued on April 1, 2020. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 17.

18. As a result of COVID DEC2, Gov. Pritzker utilized his emergency powers to execute and continue various executive orders through April 30, 2020.

ANSWER

The State Parties admit that the Proclamation issued on April 1, 2020 was one basis for the Governor's authority to continue to use certain emergency powers from April 1, 2020 through April 30, 2020. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 18.

19. Not surprisingly, on April 30, 2020, Gov. Pritzker issued yet another proclamation of disaster. (*See Exhibit "C," hereinafter referred to as "COVID DEC3"*)

ANSWER

The State Parties admit that on April 30, 2020, the Governor issued a Gubernatorial Disaster Proclamation. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 19.

20. In this third declaration, Gov. Pritzker yet again stated that the COVID-19 virus is a "novel severe acute respiratory illness," and again specifically classified such as a currently existing "public health emergency." (*See Exhibit "C", pp. 1-3*)

ANSWER

The State Parties admit that the fourth recital of the Proclamation issued on April 30, 2020 stated "COVID-19 is a novel severe acute respiratory illness." The State Parties further admit that the fifty-second recital of the Proclamation issued on April 1, 2020 stated "the circumstances in Illinois surrounding the spread of COVID-19 constitute an epidemic emergency and a public health emergency under Section 4 of the Illinois Emergency Management Agency Act." Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 20.

21. As a result of COVID DEC3, Gov. Pritzker continued to utilize his emergency powers to execute and continue various executive orders until May 31, 2020.

ANSWER

State Parties admit that the Governor's authority to use emergency powers to respond to Covid-19 continued until and past May 31, 2020 in part on the basis of the Proclamation issued on April 30, 2020. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 21.

22. To avoid belaboring the point, Gov. Pritzker issued additional and consecutive proclamations of disaster on May 29, 2020, June 26, 2020, July 24, 2020, August 21, 2020, September 18, 2020, and October 16, 2020 (hereinafter referred to as "COVID DEC4," "COVID DEC5," "COVID DEC6," "COVID DEC7," "COVID DEC8," and "COVID DEC9," respectively). Copies of each successive declaration are attached hereto as Group Exhibit "D," and expressly incorporated herein.

ANSWER

The State Parties admit the Governor issued disaster proclamations on May 29, 2020; June 26, 2020; July 24, 2020; August 21, 2020; September 18, 2020; and October 16, 2020. The State Parties further admit that FoxFire purports to attach a true and correct copy of these disaster proclamations to the Amended Complaint. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 22.

23. Therefore, from COVID DEC1 though COVID DEC9, Gov. Pritzker has attempted to wield the emergency powers under the IEMAA for more than 225 consecutive days.

ANSWER

The State Parties admit that the Governor has lawfully exercised emergency authority pursuant to IEMAA for more than 225 days. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 23.

24. To be clear, the very occurrence for which Gov. Pritzker found a "disaster" existed in COVID DEC1 was the exact same "novel severe acute respiratory illness" as COVID DEC2 through COVID DEC9.

ANSWER

The State Parties deny the allegations in Paragraph 24.

25. As a result of Proclamation #9 (or sometimes “COVID DEC9”), Gov. Pritzker issued Executive Order 2020-61 (“EO 61”). A true and correct copy of EO 61 is attached hereto as Exhibit “E,” and expressly incorporated herein.

ANSWER

The State Parties admit that FoxFire purports to attach a true and correct copy of Executive Order 2020-61 to the Amended Complaint. The State Parties deny that the issuance of Executive Order 2020-61 was “a result of” the Proclamation issued on October 16, 2020. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 25.

26. According to EO 61, Gov. Pritzker relies on the powers vested in him as the Governor of the State of Illinois, and specifically, Sections 7(1), 7(8), 7(9) and 7(12) of the IEMAA. Gov. Pritzker also declares that EO 61 is consistent with “public health laws.” (*See Exhibit “E”, p. 2*).

ANSWER

The State Parties admit that Executive Order 2020-61 references “the powers vested in [the Governor] as the Governor of the State of Illinois, and pursuant to Sections 7(1), 7(8), 7(9), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, and . . . the powers set forth in the State’s public health laws.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 26.

27. Upon information and belief, the “public health laws” which Gov. Pritzker believes are consistent with his authority in EO 61 are found in the Illinois Department of Public Health Act (the “IDPHA”). *See 20 ILCS 2305 et seq.*

ANSWER

The State Parties admit that the Illinois Department of Public Health Act, 20 ILCS 2305 *et seq.*, is one of the public health laws in effect in the State of Illinois, and further admit that Executive Order 2020-61 is consistent with the terms of the Illinois Department of Public Health

Act. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 27.

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

ANSWER

The State Parties admit that by its terms 20 ILCS 2305/2(a) provides that “[t]he State Department of Public Health has general supervision of the interests of the health and lives of the people of the State” consistent with the Illinois Constitution and other applicable statutes and law. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 28.

29. Under the IDPHA, the Department has: “supreme authority in matters of quarantine and isolation.” *See 20 ILCS 2305/2(a)*.

ANSWER

The allegations in Paragraph 29 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 29. To the extent a response is required, the State Parties admit that by its terms 20 ILCS 2305/2(a) provides that the State Department of Public Health “has supreme authority in matters of quarantine and isolation” consistent with the Illinois Constitution and other applicable statutes and law. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 29.

30. Consistent with that authority, the Department may:

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

b. “order a person or group of persons to be quarantined or isolated or ***may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious of infectious disease*** ... until such time as the

condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists.” (20 ILCS 2305/2(b)).

ANSWER

The allegations in Paragraph 30 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 30. To the extent a response is required, the State Parties admit that by its terms 20 ILCS 2305/2(b) provides that the State Department of Public Health may, consistent with applicable law, “declare and enforce quarantine and isolation, when none exists, and may modify or relax quarantine and isolation when it has been established,” and “order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious of infectious disease ... until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 30.

31. Irrespective of the above, the IDPHA continues on to state:

“no person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. The Department may, however, order a person or a group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. In the event of an immediate order issued without prior consent or court order, the Department shall, as soon as practicable, within 48 hours after issuing the order, obtain the consent of the person or owner or file a petition requesting a court order authorizing the isolation or quarantine or closure. (emphasis added) 20 ILCS 2305/2(c).

ANSWER

The State Parties admit that by its terms 20 ILCS 2305/2(b) provides “no person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. The Department may, however, order a person or a group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. In the event of an immediate order issued without prior consent or court order, the Department shall, as soon as practicable, within 48 hours after issuing the order, obtain the consent of the person or owner or file a petition requesting a court order authorizing the isolation or quarantine or closure.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 31.

32. Thus, according to statute, when the Department has not obtained either consent of the owner or the local court, the Department has the discretion to issue an immediate order which must be heard, or ruled on by the court, within 48 hours (assuming a lack of consent). (*Id.*)

ANSWER

The allegations in Paragraph 32 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 32. To the extent that a response is required, the State Parties deny the allegations in Paragraph 32.

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

ANSWER

The allegations in Paragraph 33 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph

33. To the extent a response is required, the State Parties deny the allegations in Paragraph 33.

34. Furthermore, the IDPHA mandates that, “owners of places that are ordered to be closed and made off limits to the public” are to be given specific written notice, which is to include, but not be limited to: a) notice of counsel, b) notice of the reasons for the order, c) notice of whether the order is immediate, d) if immediate, “the time frame for the Department to seek consent or to file a petition requesting a court order,” and f) notice of “anticipated duration.” (*Id.*)

ANSWER

The allegations in Paragraph 34 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph

34. To the extent that a response is required, the State Parties deny the allegations in Paragraph 34.

35. Returning to EO 61, therein, Gov. Pritzker targets Kane County restaurants and bars, requiring that they cease in-door dining altogether, among other limitations, all to take effect on October 23, 2020, for an unlimited duration (*See Exhibit “E,” pp. 2-3*).

ANSWER

The State Parties admit that by its terms Executive Order 2020-61 applied to Illinois' Region 8, including Kane County, and that by its terms it prescribed certain remediation measures that applied to restaurants and bars in Kane County. The State Parties further admit that by its terms Executive Order 2020-61 required that “[a]ll restaurants and bars in [Region 8] must suspend indoor on-premises consumption.” The State Parties further admit that by its terms, the effective date of Executive Order 2020-61 was October 23, 2020. The State Parties specifically deny that Executive Order 2020-61 was “to take effect . . . for an unlimited duration.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 35.

36. As of the date of this filing, EO 61 has ostensibly taken effect, and it appears the Department, and specifically the Kane County Health Department, have adopted the EO 61 mitigation measures as their present policy. Through the same use of proclamations and orders

highlighted above, subsequent to EO 61 the Governor issued: a) Executive Order 2020-70 on November 10, 2020, which continued or otherwise re-issued EO 61; b) Executive Order 2020-73 on November 18, 2020; and, c) and Executive Order 2020-74 on December 11, 2020, extending the closure on indoor on-premise dining through the new year.

ANSWER

The State Parties admit that by its terms, the effective date of Executive Order 2020-61 was October 23, 2020. The State Parties further admit the Governor issued Executive Order 2020-70 on November 10, 2020; Executive Order 2020-73 on November 18, 2020; and Executive Order 2020-74 on December 11, 2020. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 36.

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

ANSWER

The allegations in Paragraph 37 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 37. To the extent that a response is required, the State Parties admit that the Department is an agency of the State of Illinois, and that the Governor is the Governor of Illinois, and has at all relevant times fulfilled his duty to oversee the Department consistent with applicable law. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 37.

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

ANSWER

The allegations in Paragraph 38 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 38. To the extent that a response is required, the State Parties admit that at all relevant times the

Governor has fulfilled his duty to oversee the Department consistent with applicable law. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 38.

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

ANSWER

The allegations in Paragraph 39 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 39. To the extent that a response is required, the State Parties deny the allegations in Paragraph 39.

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

ANSWER

The allegations in Paragraph 40 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 40. To the extent that a response is required, the State Parties admit that 55 ILCS 5/5-25013(A)(6) and 55 ILCS 5/5-25013(A)(7) contain the text quoted in Paragraph 40. Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 40.

COUNT I

(Seeking a Declaratory Judgment, Pursuant to 735 ILCS 5/2-701, Finding Gov. Pritzker's October 16, 2020, Proclamation Void)

In its April 7, 2021 Memorandum and Order, the Court dismissed Count I of FoxFire's Amended Complaint. As a result, no response is required to any of the allegations contained in Count I.

COUNT II

(Seeking a Declaratory Judgment, Pursuant to 735 ILCS 5/2-701, Finding Gov.

Pritzker's Executive Order 2020-61 Void)

In its April 7, 2021 Memorandum and Order, the Court dismissed Count II of FoxFire's Amended Complaint. As a result, no response is required to any of the allegations contained in Count II.

COUNT III

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

In its April 7, 2021 Memorandum and Order, the Court dismissed Count III of FoxFire's Amended Complaint. As a result, no response is required to any of the allegations contained in Count III.

COUNT IV

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

In its April 7, 2021 Memorandum and Order, the Court dismissed Count IV of FoxFire's Amended Complaint. As a result, no response is required to any of the allegations contained in Count IV.

COUNT V

(Seeking a Finding that EO 61, the Department's Resurgence Mitigation Measures of October 20, 2020, and their progeny, are Arbitrary and Unreasonable)

72. Plaintiff restates paragraphs 1- 72 as if more fully stated herein.

ANSWER

Paragraphs 41 through 71 of FoxFire's Amended Complaint have been dismissed. As a result, no response to those paragraphs is required. To the extent a response is required, the State Parties deny the allegations in Paragraphs 41 through 71. The State Parties restate their responses to paragraphs 1–40 as if fully stated herein.

73. That while other mitigation measures are directed to all businesses within the state generally, EO 61 (and its progeny) and the Department's Resurgence Mitigation Measures of October 20, 2020 (and their progeny) single out the restaurant/bar industry and discriminates against said industry.

ANSWER

The State Parties deny the allegations in Paragraph 73.

74. That EO 61 (and its progeny) and the Department's Resurgence Mitigation Measures of October 20, 2020 (and their progeny) are ostensibly based on CDC findings concerning a purported link between Covid-19 positivity rates and restaurant dining.

ANSWER

The State Parties admit that research published by the Centers for Disease Control supports the remediation measures implemented by the Governor, including but not limited to the remediation measures implemented by and through Executive Order 2020-61. The State Parties deny that Executive Order 2020-61 mentions the Centers for Disease Control, and further deny that the remediation measures implemented by the Governor, including but not limited to the remediation measures implemented by and through Executive Order 2020-61, are solely “based on CDC findings concerning a purported link between Covid-19 positivity rates and restaurant dining.” Except as expressly admitted, the State Parties deny any and all remaining allegations in Paragraph 74.

75. That the aforementioned findings do not provide reliable information on which to reasonably conclude that public health is endangered by Kane County indoor dining. The data does not even differentiate between indoor and outdoor dining whatsoever.

ANSWER

The State Parties deny the allegations in Paragraph 75.

76. Without contact tracing and specific Kane County data, restricting indoor dining at Foxfire and other Kane County restaurants, is both arbitrary and unreasonable.

ANSWER

The State Parties deny the allegations in Paragraph 76.

77. That the Governor, the Department, and the Kane County Health Department can accomplish the same results by enacting different and less burdensome, orders, rules and regulations.

ANSWER

The State Parties deny the allegations in Paragraph 77.

78. Foxfire has a right to insist the Governor, the Department, and the Kane County Health Department issue orders, rules, and regulations which are neither arbitrary nor unreasonable, and which are not based on mere suspicion that Foxfire endangers the community.

ANSWER

The allegations in Paragraph 78 state legal conclusions to which no response is required and as such the State Parties hereby move to strike the legal conclusions contained in Paragraph 78. To the extent that a response is required, the State Parties deny that FoxFire is entitled to the requested relief, and further deny the allegations in Paragraph 78.

79. Put simply, the Defendants do not have any reliable data to conclude that Foxfire endangers the public health of its community whatsoever.

ANSWER

The State Parties deny the allegations in Paragraph 79.

WHEREFORE, Plaintiff, THE FOX FIRE TAVERN, LLC, prays that this Honorable Court:

a. Find that the Governor, the Department, and the Kane County Health Department have issued orders, rules, and regulations which are arbitrary and unreasonable as they pertain to Plaintiff;

- b. Award Plaintiff its costs incurred in the matter; and
- c. Grant such other and further relief as justice requires.

ANSWER

The State Parties deny that FoxFire is entitled to the requested relief, or any other relief based upon the allegations in Count V of its Amended Complaint.

AFFIRMATIVE DEFENSES

The State Parties' affirmative defenses are set forth below. By setting forth the following allegations and defenses, the State Parties do not assume the burden of proof on matters and issues other than those on which the State Parties have the burden of proof as a matter of law.

FIRST AFFIRMATIVE DEFENSE

FoxFire's claim in Count V of its Amended Complaint is barred because there is no freestanding cause of action through which FoxFire may contest the discretionary actions of the State Parties which serve as the basis for FoxFire's claim merely because FoxFire disagrees with that action, or believes that action may have been unwise.

SECOND AFFIRMATIVE DEFENSE

FoxFire's claim in Count V of its Amended Complaint is barred by the doctrine set forth in *The Bigelow Grp., Inc. v. Rickert*, 377 Ill. App. 3d 165, 175 (2d Dist. 2007).

THIRD AFFIRMATIVE DEFENSE

FoxFire's claim in Count V of its Amended Complaint is barred by the doctrine of sovereign immunity.

FOURTH AFFIRMATIVE DEFENSE

Recovery on FoxFire's claim in Count V of its Amended Complaint for declaratory relief is barred by the doctrine of unclean hands. On November 5, 2020 the Appellate Court issued an

order that, by FoxFire's own admission, eliminated any possibility that FoxFire could prevail on any of the counts of FoxFire's complaint that existed at that time. Notwithstanding the Appellate Court's clear holding, FoxFire refused to comply with the Appellate Court's decision. Instead, FoxFire continued to host indoor musical performances by performers not wearing masks, provide indoor dining services to customers who were not wearing masks, and otherwise purposefully engage in dangerous conduct inconsistent with the Executive Orders that had been held valid and enforceable by the Appellate Court. FoxFire's actions constitute bad faith and fraud pursuant to the doctrine of unclean hands, and FoxFire is therefore barred from recovery through any form of equitable relief.

FIFTH AFFIRMATIVE DEFENSE

FoxFire's claim in Count V of its Amended Complaint is barred by the doctrine of mootness. FoxFire's only remaining claim contests the reasonableness of provisions of Executive Order 2020-61 that restrict indoor dining at bars and restaurants in Kane County. All executive orders forbidding indoor dining at bars and restaurants in Kane County have expired, and ceased to have any effect. Furthermore, no exception to the doctrine of mootness applies. As such, FoxFire's claim for relief in Count V is moot.

SIXTH AFFIRMATIVE DEFENSE

The State Parties reserve the right to raise additional defenses as appropriate, as discovery proceeds in this matter.

Dated: April 21, 2021

Respectfully Submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Thomas J. Verticchio

Laura Bautista
Office of the Attorney General
500 South Second Street
Springfield, IL 62701
Telephone: (217) 782-9075
laura.bautista@illinois.gov

Thomas J. Verticchio
Assistant Chief Deputy Attorney General
Office of the Illinois Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-3000

Darren Kinhead
Isaac Jones
Office of the Illinois Attorney General
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies the statements set forth in this Verified Answer to First Amended Verified Complaint For Declaratory Judgment and Injunctive Relief, including the statement that there is a lack of knowledge regarding certain allegations, are true and correct.

Dated: April 21, 2021

By: /s/ Ann Spillane
General Counsel
Office of the Governor of Illinois

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies the statements set forth in this Verified Answer to First Amended Verified Complaint For Declaratory Judgment and Injunctive Relief, including the statement that there is a lack of knowledge regarding certain allegations, are true and correct.

Dated: April 21, 2021

By: /s/ Karyn L. Bass Ehler
General Counsel
Illinois Department of Public Health

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned hereby certifies the statements set forth in this certificate of service are true and correct and that he has caused a copy of the foregoing to be served upon:

*Counsel for the Kane County Health
Department*

Erin M. Brady
OFFICE OF THE KANE COUNTY
STATE'S ATTORNEY
100 S. Third St., 4th Floor
Geneva, IL 60134
BradyErin@co.kane.il.us

*Counsel for Fox Fire Tavern, LLC, d/b/a
FoxFire*

Kevin L. Nelson
MYERS, EARL & NELSON, P.C.
17 North Sixth Street
Geneva, Illinois 60134
kevin@menlawoffice.com

via email at the address noted above on April 21, 2021.

By: /s/ Thomas J. Verticchio
Thomas J. Verticchio
Assistant Chief Deputy Attorney General