

STATE OF ILLINOIS
IN THE FOURTH JUDICIAL CIRCUIT
CLAY COUNTY

JAMES MAINER, KALI MAINER, and)
HCL DELUXE TAN, LLC, an Illinois)
Limited liability company,)

Plaintiffs,)

Vs.)

ILLINOIS DEPARTMENT OF PUBLIC)
HEALTH and DR. NGOZI EZIKE, in her)
official capacity as Director of the Illinois)
Department of Public Health,)

Defendants.)

2020CH9

Case No. 2020-CH-_____

EXPARTE REQUEST

PLAINTIFFS' VERIFIED MOTION FOR A TEMPORARY RESTRAINING ORDER

Plaintiffs, JAMES MAINER, KALI MAINER and HCL DELUXE TAN, LLC., by and through their attorneys, Thomas G. DeVore, Erik D. Hyam, and DeVore Law Office, LLC., for the reasons set forth in their Verified Complaint and Memorandum in Support of Their Motion for a Temporary Restraining Order pursuant 735 ILCS 5/11-102, both of which are adopted and incorporated herein by reference, respectfully request this Court issue a temporary restraining order against Defendants. In support of this Motion, Plaintiffs state as follows:

1. As set forth more fully in the Verified Complaint and Memorandum, on May 15, 2020, the Illinois Department of Public Health (the "Department") published a Notice of Emergency Amendment to the Illinois Administrative Code (the "Code"), which went into effect on May 18, 2020 (the "Amendment").

2. The Amendment mandates a sweeping substantive legal change by denying certain procedural and substantive safeguards previously enacted by the legislature in the Illinois Department of Public Health Act. (20 ILCS 2305/2(c)).

3. In enacting the Amendment, the Department has exceeded its authority under the Illinois Department of Public Health Act in violation of the Illinois Administrative Procedure Act.

4. If left unchecked, the Department's unlawful usurp of lawmaking power reserved solely for the legislature will result in immediate, irreparable harm to citizens and businesses forced with the choice of complying with what is obviously an invalid and unlawful action by the Department, or risk being subject to criminal prosecution.

5. The public record is replete with comments from the Governor and the Director of Illinois State Police who have already threatened citizens and businesses of this State with the use of this new Amendment as a "tool" for the broader enforcement of the Governor's tenuous executive orders.

6. Plaintiffs have no adequate remedy at law because they are forced with the dilemma of either accepting the Department's deprivation of their procedural and substantive rights or facing criminal prosecution.

7. Plaintiffs clearly have protectable rights and interests at stake to be free from invalid lawmaking that strips them of procedural and substantive protections explicitly provided by statute.

8. Plaintiffs are likely to succeed on the merits as the Defendants did not have the authority to enact the Amendment, as the Amendment is beyond all authority granted to the Department and in direct contravention of the expressed intention of the Legislature, and therefore, such Amendment is void *ab initio*.

9. Waiting until such time as a hearing might be had on a determination on the merits of the injunction is too great a risk for Plaintiffs given at any moment they could be arrested and jailed for violating the emergency rule.

WHEREFORE, the Plaintiffs respectfully pray this Court enter an order that provides for:

- A. Entry of a Temporary Restraining Order immediately enjoining Defendants, or any administrative agency or law enforcement agency under its control, from exercising any color of authority under the emergency rule to interfere with a businesses right to open its premises; and
- B. Setting this matter for a preliminary injunction within 10 days; and
- C. Such further relief as this Court deems just and equitable.

Respectfully submitted,

JAMES MAINER, KALIE MAINER and
HCL DELUXE TAN, LLC., Plaintiffs.

By: /s/ Thomas G. DeVore
One of Their Attorneys

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Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, certifies that the statements set forth in this Verified Complaint for Injunctive and Other Relief are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

May 19, 2020
Date

/s/ James Mainer
JAMES MAINER