

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA**

<b>CABANA WAX, LLC,</b>	)	<b><u>JURY TRIAL REQUESTED</u></b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO.:</b>
	)	
<b>THE STATE OF ALABAMA,</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

**JURISDICTION**

1. The jurisdiction of this Court is invoked pursuant to the Fifth Amendment of the United States Constitution that has been incorporated to the States via the Fourteenth Amendment of the United States Constitution.

2. This Court has jurisdiction over Count II of this Complaint pursuant to supplemental jurisdiction, 28 U.S.C. § 1367.

**PARTIES**

3. Plaintiff, CABANA WAX, LLC (hereinafter referred to as “Cabana” and/or “Plaintiff”), is a limited liability company registered in the State of Alabama and doing business in the city of Huntsville, Alabama.

4. Defendant, State of Alabama (hereinafter referred to as “Defendant”), is a governmental entity.

## FACTS

5. Plaintiff has operated, since August 2018, a waxing salon at 309 Pelham Ave. SW Suite B, Huntsville, AL 35801.

6. Additionally, Plaintiff has almost finished “building out” a second location at 7046 Highway 72 West Suite E, Huntsville, AL 35806.

7. Prior to Governor Ivey’s public health order on March 27, 2020, Plaintiff intended to open the second Cabana on April 7, 2020.

8. Governor Ivey’s public health order on March 27, 2020, closed all non-essential businesses to the public. It specifically listed “Waxing salons” as a business forced to close or remain closed. Plaintiff is in the class of businesses required to close.

9. Plaintiff voluntarily ceased operations on a temporary basis on March 17, 2020, with plans to reopen April 7, 2020.

10. By forcing Plaintiff to close and/or remain closed to the public, the State of Alabama, through its Governor, has prevented Plaintiff from generating revenue and making profits from the operation of its business.

11. Prior to Governor Ivey’s public health order on March 27, 2020, Plaintiff was pre-booking for both locations for the workweek beginning April 7, 2020 and was set to profit its normal amount at the Pelham Ave. SW address, and was tracking very similar profits at its new location off Highway 72.

12. Plaintiff’s business is in high demand with the public.

13. Plaintiff has not seen its demand diminish due to COVID-19.

14. Prior to temporarily closing the Pelham Ave SW location, Plaintiff had taken extreme safety measures to prevent the introduction of COVID-19 into its facility.

15. Plaintiff intended to continue these measures after opening both of its stores on April 7, 2020.

16. These measures included: disallowing clients from attending who are sick (or live or work with someone who is sick); disallowing clients to attend who had traveled out of state or on a commercial airplane in the 21 days prior to their appointment; requiring clients to remain outside or in their vehicles until their appointment times to aid in social distancing measures; requiring clients to accept hand sanitizer at the door before entering; and requiring clients to not touch their cell phones or faces until after they had left the site.

17. Due to the Governor's order, Plaintiff stands to lose a currently undeterminable amount of revenue and profits. This number will continue to grow based on the duration of Plaintiff's forced closure.

18. Unlike some other "non-essential" businesses, Plaintiff is unable to generate any revenue, as Plaintiff is not able to sell its services "curbside" or through a retail website. Plaintiff simply cannot work remotely.

19. In addition to revenue and profits, Plaintiff is also suffering other damages, including, but not limited to:

- a. Irreparable harm to reputation, loss of ability to pay rent, pay staff, pay utilities, and other bills;

- b. If Plaintiff is evicted from its locations due to inability to pay rent, Plaintiff will suffer irreparable damage;
- c. The time value of money;
- d. Investment opportunities, including, but not limited to, expansion;
- e. Staff dissatisfaction, and potentially losing staff to other industries unaffected by the order;
- f. Potential loss of interest from the public due to the cancellation and/or repeated rescheduling and cancellation of hundreds of appointments;
- g. Interest incurred on loans; and
- h. Having to take out new loans and/or lines of credit which otherwise would not have been necessary;
- i. These damages continue to occur and are not entirely known at this time.

**COUNT ONE – VIOLATION OF THE FIFTH AMENDMENT TO THE  
UNITED STATES CONSTITUTION**

20. Plaintiff re-alleges paragraphs one through nineteen of the Complaint as if fully set forth herein.

21. The Fifth Amendment to the United States Constitution states, “Nor shall private property be taken for public use, without just compensation.”

22. This Amendment, through the Fourteenth Amendment, has been incorporated and made applicable to the actions of state governments, such as Defendant.

23. At no time prior to or after the Governor's order on March 27, 2020 has Plaintiff been provided just compensation.

24. The Plaintiff's business, specifically the revenue, profits, and other damages listed in paragraph nineteen, is the type of property contemplated and protected under the Fifth Amendment.

25. The State of Alabama, through its Governor, has taken from the Plaintiff, the Plaintiff's private property, and has failed to provide any compensation.

26. But for the Defendant's actions, the Plaintiff would be generating revenue and profits.

27. As a proximate cause of the Defendant's actions, the Plaintiff was and is being damaged as set forth in paragraphs eighteen and nineteen.

## **COUNT TWO – VIOLATION OF THE ALABAMA CONSTITUTION**

### **ARTICLE 1 SECTION 23**

28. Plaintiff re-alleges paragraphs one through nineteen of this Complaint as if fully set forth herein.

29. The Alabama Constitution states that a corporation's private property shall not be taken for public use unless just compensation is "first" made.

30. At no time prior to the Governor's order on March 27, 2020, was Plaintiff provided just compensation.

31. At no time after the Governor's order on March 27, 2020 has Plaintiff been provided just compensation.

32. The Plaintiff's business, specifically the revenue, profits, and other damages listed in paragraph nineteen, is the type of property contemplated and protected under the Alabama Constitution.

33. The State of Alabama, through its Governor, has taken from the Plaintiff, the Plaintiff's private property, and has failed to provide any compensation.

34. But for the Defendant's actions, the Plaintiff would be generating revenue and profits.

35. As a proximate cause of the Defendant's actions, the Plaintiff was and is being damaged as set forth in paragraphs eighteen and nineteen.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that this Court:

a) Issue an emergency injunction preventing the Governor's order from going into effect and/or allowing for non-essential businesses to re-open until such time as the State of Alabama "first" provides just compensation.

b) Enter an Order requiring Defendant to make Plaintiff whole by

awarding it compensatory damages, including those in paragraphs eighteen and nineteen, punitive damages, special damages, and/or nominal damages, injunctive and declaratory relief, and benefits.

c) Enter a permanent injunction enjoining the Defendant from issuing future orders that “take” from the Plaintiff when “just compensation” has not first been provided.

d) Plaintiff further prays for such relief and benefits as the cause of justice may require, including, but not limited to, an award of costs, attorneys’ fees and expenses.

Respectfully Submitted,



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Garrett Dennis (ASB-1211-K40A)  
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