

COVER SHEET FOR FILING CIVIL ACTIONS  
COMMONWEALTH OF VIRGINIA

Case No. \_\_\_\_\_  
(CLERK'S OFFICE USE ONLY)

Albemarle County

Circuit Court

Rob Schilling, Tobey Bouch,

v./In re:

Ralph Northam, M. Norman Oliver,

PLAINTIFF(S)

DEFENDANT(S)

Tobey's LLC

Mark Herring, James Hingeley

I, the undersigned  plaintiff  defendant  attorney for  plaintiff  defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
  - Monetary Damages
  - No Monetary Damages
- Counterclaim
  - Monetary Damages
  - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
  - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
  - ABC Board
  - Board of Zoning
  - Compensation Board
  - DMV License Suspension
  - Employee Grievance Decision
  - Employment Commission
  - Local Government
  - Marine Resources Commission
  - School Board
  - Voter Registration
  - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
  - Adoption - Foreign
- Adult Protection
- Annulment
  - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
  - Complaint - Contested\*
  - Complaint - Uncontested\*
  - Counterclaim/Responsive Pleading
  - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
  - Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
  - Guardian/Conservator
  - Standby Guardian/Conservator
  - Custodian/Successor Custodian (UTMA)
- Trust (select one)
  - Impress/Declare/Create
  - Reformation
- Will (select one)
  - Construe
  - Contested

MISCELLANEOUS

- Amend Death Certificate
- Appointment (select one)
  - Church Trustee
  - Conservator of Peace
  - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
  - Reinstatement pursuant to § 46.2-427
  - Restoration - Habitual Offender or 3<sup>rd</sup> Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
  - Correct Erroneous State/Local
  - Delinquent
- Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)

Damages in the amount of \$ \_\_\_\_\_ are claimed.

06/01/2020

DATE

Matthew D. Hardin

PRINT NAME

324 Logtrac Road, Stanardsville, VA 22973

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(434) 202-4224

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EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF

DEFENDANT

\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

**Civil Action Type Codes  
(Clerk's Office Use Only)**

Accounting .....	ACCT	Ejection .....	EJET
Adoption .....	ADOP	Encumber/Sell Real Estate .....	RE
Adoption – Foreign .....	FORA	Enforce Vendor's Lien .....	VEND
Adult Protection .....	PROT	Escheatment .....	ESC
Aid and Guidance .....	AID	Establish Boundaries .....	ESTB
Amend Death Certificate .....	ADC	Expungement .....	XPUN
Annexation .....	ANEX	Forfeiture of Property or Money .....	FORF
Annulment .....	ANUL	Freedom of Information .....	FOI
Annulment – Counterclaim/Responsive Pleading ..	ACRP	Garnishment .....	GARN
Appeal/Judicial Review		Injunction .....	INJ
ABC Board .....	ABC	Intentional Tort .....	ITOR
Board of Zoning .....	ZONE	Interdiction .....	INTD
Compensation Board .....	ACOM	Interpleader .....	INTP
DMV License Suspension .....	JR	Interrogatory .....	INTR
Employment Commission .....	EMP	Judgment Lien – Bill to Enforce .....	LIEN
Employment Grievance Decision .....	GRV	Landlord/Tenant .....	LT
Local Government .....	GOVT	Law Enforcement/Public Official Petition .....	LEP
Marine Resources .....	MAR	Mechanics Lien .....	MECH
School Board .....	JR	Medical Malpractice .....	MED
Voter Registration .....	AVOT	Motor Vehicle Tort .....	MV
Other Administrative Appeal .....	AAPL	Name Change .....	NC
Appointment		Other General Tort Liability .....	GTOR
Conservator of Peace .....	COP	Partition .....	PART
Church Trustee .....	AOCT	Permit, Unconstitutional Grant/Denial by Locality	LUC
Custodian/Successor Custodian (UTMA) .....	UTMA	Petition – (Miscellaneous) .....	PET
Guardian/Conservator .....	APPT	Product Liability .....	PROD
Marriage Celebrant .....	ROMC	Quiet Title .....	QT
Standby Guardian/Conservator .....	STND	Referendum Elections .....	ELEC
Approval of Transfer of Structured Settlement .....	SS	Reinstatement (Other than divorce or driving	
Asbestos Litigation .....	AL	privileges) .....	REIN
Attachment .....	ATT	Removal of Case to Federal Court .....	REM
Bond Forfeiture Appeal .....	BFA	Restore Firearms Rights – Felony .....	RFRF
Child Abuse and Neglect – Unfounded Complaint ..	CAN	Restore Firearms Rights – Review .....	RFRR
Civil Contempt .....	CCON	Separate Maintenance .....	SEP
Claim Impleading Third Party Defendant –		Separate Maintenance – Counterclaim/Responsive	
Monetary Damages/No Monetary Damages .....	CTP	Pleading .....	SCRP
Complaint – (Miscellaneous) .....	COM	Sever Order .....	SEVR
Compromise Settlement .....	COMP	Sex Change .....	COS
Condemnation .....	COND	Taxes	
Confessed Judgment .....	CJ	Correct Erroneous State/Local .....	CTAX
Contract Action .....	CNTR	Delinquent .....	DTAX
Contract Specific Performance .....	PERF	Termination of Mineral Rights .....	MIN
Counterclaim – Monetary Damages/No Monetary		Trust – Impress/Declare/Create .....	TRST
Damages .....	CC	Trust – Reformation .....	REFT
Cross Claim .....	CROS	Uniform Foreign Country Money Judgments .....	RFCJ
Declaratory Judgment .....	DECL	Unlawful Detainer .....	UD
Declare Death .....	DDTH	Vehicle Confiscation .....	VEH
Detinue .....	DET	Voting Rights – Restoration .....	VOTE
Divorce		Will Construction .....	CNST
Complaint – Contested/Uncontested .....	DIV	Will Contested .....	WILL
Counterclaim/Responsive Pleading .....	DCRP	Writs	
Reinstatement – Custody/Visitation/Support/		Certiorari .....	WC
Equitable Distribution .....	CVS	Habeas Corpus .....	WHC
Driving Privileges		Mandamus .....	WM
Reinstatement pursuant to § 46.2-427 .....	DRIV	Prohibition .....	WP
Restoration – Habitual Offender or		Quo Warranto .....	WQW
3 <sup>rd</sup> Offense .....	REST	Wrongful Death .....	WD



Serve: )  
 )  
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 )  
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

NOW COME Robert Schilling, Tobey Bouch, and Tobey’s LLC, and allege the following:

1. This suit arises out of Executive Order Number 63 (2020), promulgated by the Governor and the State Health Commissioner on May 26, 2020, with an effective date of May 29, 2020.
2. Executive Order Number 63 purports, by its own terms, to create criminal penalties for “willful violation or refusal, failure, or neglect to comply with” its terms. Such refusal, according to the Order, is “punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia.”

3. Executive Order Number 63 further purports to be enforceable by Virginia Department of Health and/or the State Health Commissioner.

4. Among other things, Executive Order 63 purports to require:

a) “All patrons in the Commonwealth aged ten and over...when entering, exiting, traveling through, and spending time inside” certain businesses to “cover their mouth and nose with a face covering, as described and recommended by the CDC.”

b) “All employees of essential retail businesses” to “wear a face covering whenever working in customer facing areas.”

5. Plaintiffs bring this suit pursuant to Va. Code § 8.01-184, seeking declaratory judgment because the terms of the Executive Order contradict with other laws that apply to them, and possibly subject them to contradictory governmental mandates, some of which give rise to civil liability, civil penalties, or even criminal penalties.

6. The Governor and other state employees under his authority have given numerous public statements which contradict the express terms of Executive Order No. 63. The Governor and these employees acting on his orders have variously suggested either that the order will not be enforced at all or will be enforced only in “egregious” circumstances.

However, as the U.S. District Court for the District of Maine recently held in *Bayley’s Campground, Inc. et al. v. Mills* (Case 2:20-cv-00176-LEW), Doc. 20, fn. 1, a governor’s order is either “an executive order enforceable by criminal penalties or it is a sincere suggestion, but it cannot be both. And to signal to an uncertain public that it is officially the former without clarifying what makes a ‘violation’ runs counter to the most basic

tenets of due process; to wit, to give fair notice in plain language precisely what conduct constitutes a criminal act.”

7. The Governor has also failed to explain why his order applies to some locations but not to others. As the U.S. Court of Appeals for the Sixth Circuit Recently held in *Maryville Baptist Church, Inc. et al. v. Beshear*, Case No. No. 20-5427 (Opinion issued May 2, 2020, designated for publication), “Why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister? The Commonwealth has no good answers. While the law may take periodic naps during a pandemic, we will not let it sleep through one.”
8. This Court should not allow the laws of Virginia or her Constitution to sleep through the current pandemic. Not should this Court force the citizens of Virginia to choose whether they will follow the vague and often contradictory public statements of the governor, his Executive Order, or the Code of Virginia as they decide how to dress each day. Plaintiffs turn to this Court seeking declaratory relief because they need certainty about what laws they must follow in these trying times.

#### **THE PARTIES**

9. The first-named Plaintiff in this matter is Robert Schilling. Mr. Schilling is a resident and domiciliary of Albemarle County, and frequently patronizes retail and other establishments purportedly covered by Executive Order Number 63.
10. The second-named Plaintiff in this matter is Tobey Bouch. Mr. Bouch is a resident and domiciliary of Albemarle County and frequently patronizes retail and other establishments purportedly covered by Executive Order Number 63. Additionally, he is a member of

Tobey's LLC, which is a business entity that operates pawn shops in both the City of Charlottesville and Albemarle County.

11. Tobey's LLC, is a business entity that operates pawn shops in both the City of Charlottesville and Albemarle County. It is subject to federal and state labor laws. It holds a Federal Firearms License and deals in firearms as part of its lawful commerce.
12. Ralph Northam is the Governor of Virginia and promulgated Executive Order No. 63.
13. M. Norman Oliver is the State Health Commissioner. His signature also appears on Executive Order Number 63 and the order is also promulgated, at least in part, based on authority he claims to hold under Virginia Law.
14. Mark Herring is the Attorney General of Virginia. He has the power to enforce the provisions of Executive Order No. 63 and various laws of the Commonwealth pursuant to various provisions of the Code of Virginia, including by instituting proceedings in the Circuit Court upon request of the Governor. See Va. Code § 2.2-511. Pursuant to Va. Code § 2.2-506, the Attorney General is required to defend any Commonwealth's Attorney "in any proceedings brought against him seeking to restrain the enforcement of any state law."
15. James Hingeley is the Commonwealth's Attorney of Albemarle County. Pursuant to Va. Code § 15.2-1627 (B), he has "the duty of prosecuting all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in jail, or a fine of \$500 or more, or both such confinement and fine.

#### **JURISDICTION AND VENUE**

16. This Court has jurisdiction pursuant to Va. Code § 17.1-513 and Va. Code § 8.01-184.
17. Venue in this Court is proper according to the principles set forth in Va. Code § 8.01-257.

18. Venue is proper in this Court pursuant to Va, Code § 8.01-261 because:

- a) Robert Schilling and Tobey Bouch are residents and domiciliaries of Albemarle County, seeking review of an “order” which governs their activities within Albemarle County.
- b) Tobey’s LLC is a business that operates in Albemarle County, and seeks review of an “order” which governs its activities in Albemarle County.
- c) James Hingeley is an officer of the Commonwealth and “has his official office” in Albemarle County.
- d) Any enforcement action which this court might enjoin “is to be done, or being done, or is apprehended to be done” in Albemarle County.

**VIRGINIA LAWS RELATING TO MASKS**

19. Prior to the outbreak of COVID-19, in response to a tragic history of violence, often including racially-charged intimidation, in the Commonwealth of Virginia, the General Assembly criminalized the wearing “any mask, hood or other device whereby a substantial portion of the face is hidden or covered so as to conceal the identity of the wearer.” Va. Code § 18.2-422.

20. Va. Code § 18.2-422 penalizes such unlawful mask-wearing as a class 6 felony, with certain exceptions, including:

- (i) wearing traditional holiday costumes;
- (ii) engag[ing] in professions, trades, employment or other activities and wearing protective masks which are deemed necessary for the physical safety of the wearer or other persons;
- (iii) engag[ing] in any bona fide theatrical production or masquerade ball; or



(iv) wearing a mask, hood or other device for bona fide medical reasons upon:

(a) the advice of a licensed physician or osteopath and carrying on his person an affidavit from the physician or osteopath specifying the medical necessity for wearing the device and the date on which the wearing of the device will no longer be necessary and providing a brief description of the device, or

(b) the declaration of a disaster or state of emergency by the Governor in response to a public health emergency where the emergency declaration expressly waives this section, defines the mask appropriate for the emergency, and provides for the duration of the waiver.

21. An attempt to commit a Class 6 felony is punishable as a Class 6 felony pursuant to Va.

Code § 18.2-26. Accessories and co-conspirators in the commission of a Class 6 felony are subject to criminal penalties pursuant to Va. Code § 18.2-22.

22. None of the exceptions found in Va. Code § 18.2-422 apply to the individual Plaintiffs.

They are not celebrating Halloween. Their professions are not associated with safety hazards requiring the wearing of a mask. They are not engaged in theater or any masquerade. They do not possess an affidavit from any medical professional which establishes a medical necessity for them to wear a mask. Lastly, the Governor has never “expressly waived” Va. Code § 18.2-422 or defined what mask he believes is appropriate, except with vague reference to CDC guidelines.<sup>1</sup>

23. As such, Plaintiffs reasonably fear that if they wear a mask in public or on private property, they may face felony or other charges pursuant to Va. Code § 18.2-422.

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<sup>1</sup> Indeed, Executive Order No. 63 does not reference Va. Code § 18.2-422 at all, and the Governor has made no public statements about the effect of Va. Code § 18.2-422.

24. However, given the express terms of Executive Order No. 63, Plaintiffs also reasonably fear that if they do not wear a mask in public or on private property as required by the order, they may be prosecuted for misdemeanors or otherwise become subject to enforcement action by the Department of Health.

**VIRGINIA LAW RELATING TO THE AUTHORITY**  
**OF THE EXECUTIVE BRANCH**

25. Executive Order No. 63 cites, in its text, various provisions of the Virginia Code and even the Constitution of Virginia to support the proposition that the Governor, the State Health Commissioner, or both, have the authority to order members of the public to wear a mask or to penalize business owners who decline to enforce the governor's edict upon members of the public. But a review of all the legal authorities cited in Executive Order No. 63 reveals no support for the Governor's assumed authority at all.

26. A review of Virginia history similarly reveals no implicit authority to support Executive Order No. 63. No Governor in the history of this Commonwealth has ever claimed the unilateral authority to impose a dress code on the citizenry, under any circumstances.

27. Executive Order No. 63 also runs afoul of general principles of Constitutional and legislative interpretation. The Constitution of Virginia provides that "the Governor shall take care that the laws be faithfully executed." Va. Const. Art. V. §7. "The legislative power of the Commonwealth," however, is "vested in a General Assembly." Va. Const. Art. IV §1. Although the legislature can delegate power to either the governor or any administrative officer or agency," no administrative order or regulation can ever contradict the express terms of a statute. *Moore v. Brown*, 758 S.E.2d 68, 72(Va. App. 2014).

28. The Virginia Supreme Court has held that “It is a fundamental principle of our system of government that the rights of men are to be determined by the law itself, and not by the let or leave of administrative officers or bureaus. This principle ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government... to determine and declare what the law shall be.” *Assaid v. Roanoke*, 179 Va. 47, 50 (1942).

29. Here, however, Plaintiffs are faced with a stark choice. They can obey the law as set forth by legislature, which enacted Va. Code § 18.2-422. Or, they can obey the law as set forth by the Governor and the Health Commissioner, both of whom jointly promulgated Executive Order No. 63. Compliance with both the Code of Virginia and Executive Order No. 63 is difficult at best, and perhaps impossible.

#### **FACTUAL BACKGROUND**

30. It is well-established in medical literature that surgical masks, especially masks worn for long durations, have a propensity to become colonized by bacteria.<sup>2</sup> As such, a mask worn improperly, or a mask worn for a duration in excess of a few hours, or a mask which has come into contact with the wearer’s hand, may actually increase the risk of health concerns rather than serve as a protective measure.

31. Homemade masks have the same propensity for bacterial contamination as surgical masks, but without the proven advantages of surgical masks for preventing the spread of contagions. As the Centers for Disease control note: “homemade masks are not considered P[ersonal] P[rotective] E[quipment], since their capability to protect H[ealth] C[are]

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<sup>2</sup> See, e.g., *Microbial Contamination on Used Surgical Masks among Hospital Personnel and Microbial Air Quality in their Working Wards: A Hospital in Bangkok*, *Oman Med J.* 2014 Sep; 29(5): 346–350.

P[ersonnel] is unknown. Caution should be exercised when considering this option.

Homemade masks should ideally be used in combination with a face shield that covers the entire front (that extends to the chin or below) and sides of the face.”<sup>3</sup>

32. Although the Centers for Disease Control recommends homemade masks be used with “caution,” the World Health Organization disagrees. “[T]he World Health Organization (WHO) states that cloth (e.g., cotton or gauze) masks are not recommended under any circumstances.”<sup>4</sup> Academic literature suggests that “cloth masks are only marginally beneficial in protecting individuals from particles smaller than 2.5  $\mu\text{m}$ ” but “due to the microscopic nature of bacteria and viruses” the WHO’s “caution” against the use of cloth masks is justified.<sup>5</sup>

33. Masks have long been associated in our society with unlawful activity. From the outlaws of the Wild West, to the Klansmen of the post-bellum South, masks have often been worn to hide the identity of those engaged in unlawful activities. For this reason, numerous establishments, including banks and various retail establishments, have long established policies preventing masks from being worn on the premises.

34. Plaintiff Tobey Bouch is a business owner who is engaged in lawful commerce in firearms (under the auspices of co-plaintiff Tobey’s LLC). Plaintiffs Bouch and Tobey’s LLC are put at risk by any edict that forces them to allow mask-wearing patrons onto a

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<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html> (accessed May 31, 2020).

<sup>4</sup> Rossettie, S., Perry, C., Pourghaed, M., & Zumwalt, M. (2020). “Effectiveness of manufactured surgical masks, respirators, and home-made masks in prevention of respiratory infection due to airborne microorganisms.” *The Southwest Respiratory and Critical Care Chronicles*, 8(34), 11-26. <https://doi.org/10.12746/swrccc.v8i34.675>

<sup>5</sup> *Id.*

premises where firearms are sold and large sums of cash are present. Plaintiffs Bouch and Tobey's LLC fear that permitting masks on the premises will encourage criminal activity.

35. Plaintiffs Bouch and Tobey's LLC are not merely fearful of hypotheticals. Tobey's LLC has been burglarized in the past, and a retail establishment in neighboring Louisa County was burglarized by a patron wearing a mask on May 6, 2020.<sup>6</sup> News reports also contain evidence that surgical masks are being used for criminal robberies in various locations nationwide, including in Santa Ana, California,<sup>7</sup> Charlotte, North Carolina,<sup>8</sup> and in Connecticut and New York.<sup>9</sup>

36. Due to safety concerns, neither Plaintiff Bouch nor Tobey's LLC would require masks to be worn on the premises of Tobey's LLC but for Executive Order No. 63.

37. There is no data that proves society-wide face masking prevents communicable disease. As the Center for Infectious Disease Research and Policy at the University of Minnesota notes, "We do not recommend requiring the general public who do not have symptoms of COVID-19-like illness to routinely wear cloth or surgical masks." The Center further specifically states that "[t]here is no scientific evidence they are effective in reducing the risk of SARS-CoV-2 transmission."<sup>10</sup>

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<sup>6</sup> <https://www.nbc29.com/2020/05/16/louisa-police-department-makes-arrest-melon-head-convenience-store-robbery/> (accessed May 31, 2020).

<sup>7</sup> <https://losangeles.cbslocal.com/2020/05/14/coronavirus-santa-ana-robberies-increase-suspects-face-covering-orders/> (accessed May 31, 2020).

<sup>8</sup> <https://www.charlotteobserver.com/news/local/crime/article242049866.html> (accessed May 31, 2020).

<sup>9</sup> <https://www.insider.com/coronavirus-armed-robbers-use-face-masks-to-hold-up-stores-2020-5> (accessed May 31, 2020).

<sup>10</sup> <https://www.cidrap.umn.edu/news-perspective/2020/04/commentary-masks-all-covid-19-not-based-sound-data>

38. Due to personal concern about the unhealthy consequences of wearing masks which may have been colonized by bacteria, and given the lack of medical literature suggesting masks are effective in reducing the transmission of COVID-19, neither Plaintiff Bouch nor Tobey's LLC would require masks to be worn on the premises of Tobey's LLC but for Executive Order No. 63. Due to his review of the medical literature, Plaintiff Schilling would not wear a mask if not legally required to do so by applicable law.

39. The Plaintiffs are thus put in an impossible situation. Plaintiffs Bouch and Schilling are told by the Governor that they must wear a mask pursuant to Executive Order No. 63, despite the fact that there is no such evidence that such masks are effective in reducing the risk of SARS-CoV-2 infections, despite the fact that such masks are proven to be colonized over time by dangerous bacteria, and despite the fact that wearing a mask may subject them to criminal prosecution for a Class 6 felony.

40. Plaintiff Tobey's LLC fears that if it mandates its employees or customers wear such masks, especially given the bacteriological risks that have been widely publicized, it may be held liable if any employees or customers subsequently become ill as a result of a bacterial infection. Plaintiff Tobey's LLC further fears that if it mandates wearing masks, and if such a mandate facilitates criminal activity which victimizes customers or employees of the store, Tobey's LLC may become liable for damages to such customers or employees. However, Tobey's LLC also fears that failure to comply with Executive Order No. 63 may subject it to enforcement action from the Department of Health or from the Defendants.

**PRAYER FOR RELIEF**

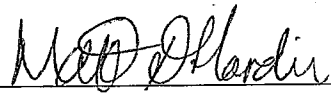
Given the contradictory legal edicts that the Plaintiffs face and their need for clarity regarding what laws and orders they are obliged to follow, including but not limited to whether they are obliged to wear a mask or prohibited from doing so under the laws of Virginia, Plaintiffs pray that this Court enter an order providing that:

a) The Governor's Executive Order No. 63 is unlawful and that the Plaintiffs have no civil or criminal liability arising from a failure to comply with its terms; and/or

b) The Albemarle County Commonwealth's Attorney and the Attorney General of Virginia are enjoined from enforcing Va. Code § 18.2-422 as applied to the Plaintiffs to the extent they attempt to comply with Executive Order No. 63; and/or

c) The Governor is enjoined from requesting, as contemplated by Va. Code § 2.2-511, that the Attorney General prosecute violations of Va. Code § 18.2-422 and/or violations of Executive Order 63.

Respectfully submitted this 1<sup>st</sup> day of June, 2020,



**Robert Schilling  
Tobey Bouch  
Tobey's LLC**

**By Counsel:**

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CERTIFICATE OF SERVICE

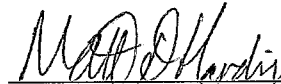
I hereby certify that on the 1<sup>st</sup> day of June, 2020, I deposited a true and correct copy of the foregoing into the U.S. mail, postage prepaid, addressed to:

Rita Davis  
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109 Governor Street  
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James Hingeley  
Albemarle County Commonwealth's Attorney  
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Matthew D. Hardin