STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION No. 20CVS006358-910
NORTH CAROLINA BAR AND TAVERN ASSOCIATION, *et al.*, Plaintiffs, vs. GOVERNOR JOSHUA H. STEIN[1], in his official capacity as Governor of North Carolina, Defendant.	**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL PLAINTIFFS' RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

INTRODUCTION AND SUMMARY

Plaintiffs in this matter are a group of bars and their owners who allege that Defendant deprived them of the fruits of their labors by issuing Executive Orders that closed their bars during the COVID-19 pandemic. The claim was originally filed in 2020, and the parties are currently engaged in discovery. Defendant served Defendant's First Set of Interrogatories and Request for Production of Documents on March 13, 2026 and, on August 28, 2026, moved to compel Plaintiffs' responses.

Despite more than seven months having passed since the initial discovery was served (including two since Defendant's motion to compel), several Plaintiffs have still failed to produce any documents or substantive responses to Defendant's requests. Other Plaintiffs' responses remain insufficient. All Plaintiffs have objected

[1] The case was originally filed against then-Governor Roy Cooper. Pursuant to N.C. R. Civ. P. 25(f)(1), Governor Stein was automatically substituted as Defendant upon taking office.

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to producing any information related to sources of income, loans, grants, or financial assistance they received during the COVID-19 pandemic based on the "collateral source rule." That rule, however, is applied to tort claims, not *Corum* claims like the one at issue, and it is related to the admissibility of certain evidence at trial, not whether the same material can be produced in discovery. The Court should compel Plaintiffs to provide complete responses to Defendant's discovery requests.

ARGUMENT

1. The Collateral Source Rule Does Not Apply.

The collateral source rule does not preclude Plaintiffs' responses to Interrogatory 13 and the corresponding Request for Production of Document 9. The collateral source rule is a longstanding principle prohibiting the admission of evidence of payments or benefits to a plaintiff for their injuries from an outside source when assessing damages against a tortfeasor. *See Nicholson v. Thom*, 236 N.C. App. 308, 335, 763 S.E.2d 772, 789 (2014) (outlining the collateral source rule). For example, in a negligence claim, a plaintiff may object to the defendant presenting evidence at trial that the plaintiff's insurance company covered the plaintiff's medical bills based on the collateral source rule.

The rule is "punitive in nature" and is intended to prevent a tortfeasor from reducing their financial liability by proving "a portion of the plaintiff's damages have been paid by a collateral source." *Wilson v. Burch Farms, Inc.*, 176 N.C. App. 629, 639, 627 S.E.2d 249, 257 (2006). The rule is "typically applied only in actions arising under tort law" or actions brought in connection with tort claims. *Id.*

Upon information and belief, North Carolina courts have never applied the collateral source rule when assessing a *Corum* claim. Nor would it be appropriate for courts to apply the rule in that context, where the purpose is not to punish a tortfeasor but rather to fashion the least intrusive remedy necessary to address the constitutional harm the plaintiff claims to have suffered. *Corum v. Univ. of N.C*, 330 N.C. 761, 784-85, 413 S.E.2d 276, 291 (1992).

Regardless, even if the collateral source rule could somehow be deemed applicable to the present *Corum* claim, it is not appropriate grounds for an objection to discovery requests. The collateral source rule applies to the *admissibility* of evidence at trial, not whether information is *discoverable* before trial. *See Spivey v. Babcock & Wilcox Company*, 264 N.C. 387, 387, 141 S.E.2d 808 (1965) ("It is well established in this jurisdiction that evidence of a plaintiff's receipt of benefits for his or her injury or disability is generally not admissible. This principle is called the collateral source rule.") And "[i]t is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. . . ." N.C. R. Civ. P. 26(b)(1).

Accordingly, the information Defendant requested should be produced. First, if Plaintiffs received assistance from the state of North Carolina, that assistance would not have come from a collateral source. Rather, it would have come from the same source as Plaintiffs now seek to recover from here. This would be similar to *Nicholson*, where the collateral source rule did not bar a doctor from producing

evidence showing that his employing hospital, also an alleged tortfeasor, forgave the plaintiff's medical bills in a medical malpractice matter. *Nicholson*, 236 N.C. App. at 334-37, 763 S.E.2d at 789-91.

Second, information related to financial assistance Plaintiffs received from other sources could be introduced for purposes other than calculating alleged damages. North Carolina courts interpret the "Fruits of Their Labor" clause in the state Constitution to protect citizens against state action that burdens economic activity, "unless the promotion or protection of the public health . . . or the general welfare makes it reasonably necessary." *Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418, 424, 904 S.E.2d 720, 720 (2024). Information or evidence related to any financial assistance Plaintiffs received during the COVID-19 pandemic could be offered to prove or disprove the economic burden Plaintiffs allegedly experienced, separate from calculation of damages. Therefore, the information Defendant seeks would not be barred by the collateral source rule.

Third, information Defendant requested in Interrogatory 13 and Request 9 could be relevant for establishing an adequate remedy if needed, should the Court ultimately find a constitutional violation. In *Corum* claims, courts must determine the least intrusive remedy "depend[ing] on the facts of the case developed at trial." *Id.* at 429, 904 S.E.2d at 730. Even where a *Corum* plaintiff seeks damages, the trial court may ultimately need to "fashion a common law remedy less intrusive than money damages" based on the facts of the case. *Id.* at 430, 904 S.E.2d at 730. Therefore, the economic burden allegedly imposed by the State's restrictions, and

whether Plaintiffs have already received funds to remedy that alleged burden, could be critical facts relevant to the court's construction of the least intrusive remedy for Plaintiffs' claims.

The information Defendant seeks is directly related to the alleged financial impact of the restrictions on Plaintiffs' businesses. If necessary, with the benefit of this information, the court can better determine whether and to what extent damages are least intrusive, or whether an alternative remedy could address the alleged violation with minimal "encroachment upon other branches of government." *Corum*, 330 N.C. at 784, 413 S.E.2d at 291.

As such, the Court should order Plaintiffs to produce information and material related to sources of income, loans, grants, or financial assistance they received during the COVID-19 pandemic.

2. The Court Should Compel Plaintiffs to Produce Complete Responses to Defendant's Request for Production of Documents.

As of the time of this filing, Plaintiffs not have provided sufficient responses to Defendant's Request for Production of Documents. Defendant requested reasonable information related to Plaintiffs' finances and business operations that Plaintiffs had a legal obligation to preserve. *See McLain v. Taco Bell Corp.*, 137 N.C. App. 179, 187, 527 S.E.2d 712, 718 (2000) (explaining that the obligation to preserve important documents ordinarily arises at the time a suit is initiated).

Thus far, several Plaintiffs have failed to produce any documents to Defendant, including Anthony Floyd and Crickets Dart Room LLC d/b/a Crickets Dart Room, Matthew Papurca and Twin Ravens Tavern, Robert Nichols and

Blacksheep Tavern, Tina Lawson and Clean Slate Billiards Club LLC d/b/a Clean Slate Billiards, James Rochford, and Whitney Ventures Group. As Defendant served Plaintiffs with his First Request for Production of Documents in March of 2026, and this motion has now been pending for two months, the Court should order Plaintiffs to produce documents within 10 days or face dismissal. This case cannot reasonably continue without Plaintiffs' full cooperation and participation, and these Plaintiffs should be dismissed if they continue to refuse to produce responsive documents.

Other Plaintiffs have produced only partial responses to Defendant's requests. As noted in Defendant's motion, for example, Plaintiff Dan Lovenheim produced only W2 forms for his associated business entities and Plaintiff Benjamin Harris produced nothing other than two Facebook screenshots. Despite this motion having been pending for two months, both have declined to supplement their responses in a manner that could help Defendant meaningfully evaluate their claims.

Still others who have produced documents since Defendant's Motion to Compel was filed claim they cannot access or will not produce documents. Examples include Plaintiff Andrew Thompson, who stated that he believes relevant documents may be stored in an old filing cabinet in a building he no longer rents. Likewise, Plaintiff Donald Liebes stated that he can no longer access responsive documents without resubscribing to QuickBooks, but failed to explain why this

would be unduly burdensome for him given his obligation to preserve relevant documents for his claim.[2]

Defendant's request for information and material related to Plaintiffs' finances and business operations from a limited time period around the COVID-19 pandemic was reasonable. The documents requested are necessary for an understanding of the economic burden Plaintiffs allege resulted from the Executive Orders. Without information about Plaintiffs' finances, Defendant is unable to evaluate Plaintiffs' allegations of economic harm and therefore unable to adequately defend itself against their claims. Defendant also is unable to mediate this matter as the Case Management Order requires without the requested information. At this point in the case, an order compelling responses is necessary. Furthermore, all Plaintiffs should be barred from relying on or otherwise seeking to use any documents they fail to produce to Defendant in a timely fashion.

Since Defendant's motion was filed, Plaintiffs have continued to produce documents in a piecemeal fashion. To aid the Court, Defendant has filed an Amended Exhibit D, which is a set of tables to illustrate what Plaintiffs have and

[2] In addition, several Plaintiffs apparently failed to preserve documents directly relevant to their claims. For example, Plaintiff Wayne Anstead stated that he failed to preserve sales data, bank records, and emails he sent to the North Carolina Bar and Tavern Association regarding this lawsuit and the Executive Orders at issue. Plaintiff Joseph Leone stated he no longer has sales records from the time period requested. Plaintiff Johnny Martin failed to preserve information regarding employees, managers, or agents of his business. Similarly, Plaintiffs Michael Stojik and Wendy Harris failed to preserve payroll records. While these Plaintiffs cannot produce documents they truly failed to preserve, they also cannot pursue claims based on documents that no longer exist.

have not produced up to and including October 18, 2026, to the best of the undersigned's knowledge. On October 23, 2026, the undersigned submitted the tables to Plaintiffs' counsel for their input. Plaintiffs' counsel indicated that the tables were incorrect, but did not point to specific inaccuracies.

On October 25, 2026, Ashley Tipper and RLTipper LLC, Rocky Christy and Country Saloon, Holly Whitley and Gypsy Woman LLC, Anthony Kearey and 2AK Enterprises submitted additional documents. On October 26, 2026, Plaintiff Stan Matthiae also produced additional documents. On October 28, 2026, Plaintiffs Amber England and Kari Cohoon and White Rabbit Pub LLC d/b/a White Rabbit Pub and Red Monkey Lounge, Katherine Kafer and AYKA LLC d/b/a The Palm Room, and Patricia Dewberry and On-After Pub & Grub produced documents for the first time. Plaintiffs have indicated that further productions may be made prior to the November 2, 2026 hearing. However, Defendant is unable to reasonably evaluate such productions in the week prior to the hearing on Defendant's motion.

CONCLUSION

For the reasons set forth above, the Court should grant Defendant's motion and compel Plaintiffs to submit complete responses to Defendant's First Set of Interrogatories and Request for Production of Documents.

Respectfully submitted, this the 29th day of October 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of this Memorandum in Support of Defendant's Motion to Compel Plaintiffs' Response to Defendant's First Set of Interrogatories and Request for Production of Documents by filing a copy of same by email and with the Court's electronic filing system, and via electronic and first class mail, addressed as follows:

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This the 29th day of October 2026.

/s/ Elizabeth B. Jenkins
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Special Deputy Attorney General