

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Lionheart L.L.C. d/b/a Alibi Drinkery,

Defendant.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against Defendant Lionheart L.L.C. d/b/a Alibi Drinkery (“Alibi Drinkery”) alleges as follows:

INTRODUCTION

1. In response to the ongoing COVID-19 pandemic, on March 13, 2020, Governor Tim Walz declared a peacetime emergency, which was most recently extended until at least through December 14, 2020 pursuant to Executive Order 20-97. From March 2020 through November 2020, the governor attempted to slowly and safely reopen the Minnesota economy, placing restrictions on businesses to slow the community spread of COVID-19. By November 18, 2020, however, Minnesota reported over 240,000 confirmed cases of COVID-19 in the state, with 100,000 of those cases being added in only 41 days. Thus, on November 18, 2020, Governor Walz issued Emergency Executive Order 20-99, “implementing a four week dial back on certain activities to slow the spread of COVID-19.” On December 16, 2020, Governor

Walz issued Emergency Executive Order 20-103, which, beginning at 11:59 p.m. on December 18, 2020, extends and modifies Executive Order 20-99.

2. In relevant part, Executive Order 20-99 temporarily prohibits restaurants and bars from offering on-premises consumption of food or beverages (including alcoholic beverages) and from allowing ingress, egress, use, and occupancy by members of the public except to allow up to five members of the public on the premises for the purpose of picking up food or beverages for off-site consumption through December 18, 2020. Executive Order 20-99 also encourages restaurants and bars to “offer food and beverage using delivery services, window service, walk-up service, drive-through service, or drive-up service,” while the temporary restrictions are in place.

3. Executive Order 20-103 extends the restaurant restrictions of Executive Order 20-99 to January 10, 2021 but modifies the restrictions to allow for outdoor service of on-premises consumption at less than 50% capacity, no more than four customers seated at one table, and not during the hours of 10:00 p.m. – 4:00 a.m.

4. Despite Executive Order 20-99’s express restrictions, which have the full force and effect of law, Alibi Drinkery, which owns and operates a bar/restaurant in Lakeville, MN, has provided on-premises consumption of food and beverages and allowed the public to enter the establishment beyond the restrictions of Executive Order 20-99 starting December 16, 2020, and has threatened to continue violating the Order.

5. Emergency Executive Order 20-99’s prohibitions on on-premises dining and restrictions on restaurant and bar occupancy and Emergency Executive Order 20-103’s continued prohibitions on indoor on-premises consumption are necessary to protect public health and safety during the ongoing COVID-19 pandemic. COVID-19 is easily transmissible and deadly. On-

premises consumption at bars and restaurants, and particularly indoor consumption, pose a particularly high risk of COVID-19 transmission because it allows people to gather and congregate around others from different households to eat and drink without face coverings, often for extended periods of interactions. Despite the public health harm this poses to Minnesotans, Alibi Drinkery has refused to comply with Executive Order 20-99. On December 15, 2020, Defendant promoted on its restaurant's Facebook page that "WE ARE OPEN WEDNESDAY 11AM." That same day, Alibi Drinkery posted a link on its Facebook page to a GoFundMe page titled "Reopen Our State: Get People Back to Work" with Alibi Drinkery's Logo organized by Alibi Drinkery co-owner Lisa Zarza with the goal of raising \$10,000 with one of the purposes being to "provide funds, if needed, to cover legal fees, fines, etc, associated with the Rally and future decisions made to demand our state reopen".

6. As reported by a number of news outlets including the Star Tribune, Alibi Drinkery did open at 11:00 a.m. on Wednesday, December 16, 2020. The Star Tribune reported and documented in photos an overflow crowd. Co-owner Lisa Zarza told the newspaper she intended to keep serving until 2 a.m., her normal closing time and if officials showed up to tell her otherwise, she said "You know what? We'll see them in court." Star Tribune photo journalist Aaron Lavinsky posted additional photos on Twitter of the restaurant opening showing the packed bar with no masking or social distancing.

7. In short, Alibi Drinkery, LLC is ignoring the risks of the virus and has disregarded the prohibitions established by Emergency Executive Order 20-99 and Executive Order 20-103 to protect the public's health and safety. Attorney General Keith Ellison therefore brings this action to protect the public health and safety by enforcing Executive Order 20-99 and Executive Order 20-103 and to enjoin from extending, offering, or otherwise making available

on-premises consumption at its location, and enjoin Alibi Drinkery from further violating Emergency Executive Order 20-99 and violating Emergency Executive Order 20-103 when it goes into effect.

PARTIES

8. Keith Ellison, the Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8 and has common law authority, including *parens patriae* authority, to bring this action to enforce Emergency Executive Order 20-99, to vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and obtain full relief for—violations and/or threatened violations of Emergency Executive Order 20-99.

9. Defendant Lionheart L.L.C. d/b/a Alibi Drinkery is a business with its principal executive office address 7620 Crosswind Ct., Lakeville, MN 55044 and principal place of business at 20851 Holyoke Avenue, Lakeville, MN 55044 and is owned by Lisa Monet Zarza and Ricardo Baldazo.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to Minnesota Statutes sections 8.01, 8.31, Emergency Executive Order 20-99, and under common law.

11. This Court has personal jurisdiction over Defendant because Defendant has violated and/or threatened to violate Emergency Executive Order 20-99, thereby causing and threatening to cause injury to the public health and safety of Minnesota residents.

12. Venue in Dakota County is proper under Minnesota Statutes section 542.09 because the cause of action arose in Dakota County.

FACTUAL BACKGROUND

I. THE COVID-19 PANDEMIC IS AN ONGOING PUBLIC HEALTH EMERGENCY, WHICH HAS REQUIRED MINNESOTA TO TAKE ACTION TO PROTECT PUBLIC HEALTH AND SAFETY.

13. Minnesota's fight against the COVID-19 virus represents one of the greatest public health emergencies this state has handled in its 162-year history. In part, the magnitude of Minnesota's response has been in reaction to the uniquely virulent characteristics of the disease: In one study, researchers found that a single infected person likely spread the virus to 53 other people during the course of a single choir rehearsal.¹ Minnesota is fighting the infection, but the virus continues to spread and the need for emergency preventative measures remains in order to protect public health and safety.

14. COVID-19 kills people. In Minnesota alone, as of December 16, 2020, COVID-19 has already caused at least 4,555 deaths. 386,412 positive cases have been reported across the state with 28,795 of those positive cases reported in the first week of December alone.²

15. Minnesota is currently experiencing some of the highest numbers of COVID-19 cases since the beginning of the pandemic. For example, it took Minnesota over 6 months to record its first 100,000 positive COVID-19 cases, but only 41 days to add an additional 100,000 new cases. Just 16 days later, Minnesota logged another 100,000 positive cases.

16. In the months of November and December of 2020, Minnesota has been recording record numbers of daily new cases, hospitalizations, intensive care unit admissions, and deaths. On December 16, 2020 alone, there were 92 reported deaths due to COVID-19. Surging COVID-

¹ Hammer et al., *High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice—Skagit County, Washington, March 2020*, 69 MORBIDITY & MORTALITY WEEKLY R. 16, 606-10 (May 15, 2020), available at, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm>.

² *Situation Update for COVID-19, Updated December 10, 2020*, MINN. DEPT. OF HEALTH, <https://www.health.state.mn.us/diseases/coronavirus/situation.html>.

19 cases are pushing Minnesota's hospital system to a critical point.³ Due to unprecedented staffing shortages, many hospitals are diverting patients to other facilities and making difficult choices, like discharging patients that normally would have longer hospital stays. Hospitals are running out of critical care beds that are a necessity for COVID-19 patients experiencing severe symptoms.

17. In Dakota County, at least 241 individuals have passed away due to COVID-19 and 27,798 have tested positive. Dakota County is presently experiencing extremely high rates of community spread of COVID-19. The 14-day case rate per 10,000 people has jumped dramatically from 29.10 for the reporting period of October 4, 2020 to October 17, 2020, to 141.51 for the reporting period of November 15, 2020 to November 28, 2020. Nearby hospital Fairview Ridges in Burnsville, MN is reporting a 90% occupancy of ICU beds with only one bed available. This is the deadly backdrop against which the Defendant has decided to defy an order intended to stem community spread of a virus and unlawfully remain open to the public for on-premises consumption of food and beverages.

18. COVID-19 can easily be spread through respiratory droplets exhaled into the air by individuals not wearing face coverings. The on-premises consumption of food and beverages at bars and restaurants in Minnesota continues to pose substantial risks to public health and safety. Bars and restaurants pose a particularly high risk of COVID-19 transmission because they allow people to gather and congregate around people from different households while eating and drinking without face coverings, often for extended periods of interaction. Individuals cannot remain masked while they are eating and drinking, and many people leave their masks off

³ Howatt, Glen, New bar, restaurant and gym COVID-19 restrictions expected in Minnesota, MINNEAPOLIS STAR TRIB. (Nov. 18, 2020), *available at* <https://www.startribune.com/new-bar-restaurant-and-gym-restrictions-expected-in-minn/573107051/>.

in bars and restaurants while talking. Bars and restaurants can be loud, leading to a larger volume of respiratory droplets in the air as people talk, raise their voices to be heard, or laugh. Moreover, both the consumption of alcohol at these establishments and gathering with close friends or family can lower inhibitions and interfere with effective social distancing. This is especially true at bars later at night when individuals are more prone to move about and mingle within these establishments. All of these factors make bars and restaurants high risk for the easy transmission of COVID-19.

19. For example, one study examined COVID-19 transmission in a bar during a St. Patrick's Day celebration in Vietnam. The study found that it was likely that a single person spread the virus to 18 other people over the course of a single night, even though only 4 of the 18 reported being in close contact with the infectious individual.

20. In another study publicized by the national Centers for Disease Control and Prevention ("CDC"), a significant viral outbreak occurred at a family gathering at a restaurant. Not only did the family members who attended the meal become ill, but other patrons unassociated with the reunion became sick. The researchers' hypothesis indicates that the virus was spread simply through the air of the restaurant.

21. In yet another study, an outbreak of three cases occurred at a restaurant including one case who sat 21 feet away from the infector for only 5 minutes.

22. An outbreak is generally defined as multiple cases of illness related by time and place in which an epidemiologic investigation suggests person-to-person transmission or contamination occurred. It is challenging to document the full scope of any COVID-19 outbreak, by what is known as secondary and tertiary transmission of COVID-19. This is because a person may have COVID-19 and be asymptomatic or experience mild symptoms and never get tested,

but still be able to infect others. And importantly, the contact tracing process relies on truthful and accurate self-reporting from persons infected or exposed to the virus. If a person exposed to the virus does not fully disclose their symptoms, activities, or contacts, then the total numbers related to an outbreak will be underreported. Because of these challenges, the total impact of outbreaks in Minnesota will never be fully known. Instead, these documented outbreaks represent just the tip of the iceberg of transmission and there are likely many more cases from the outbreak source that haven't been identified.

23. Minnesota Department of Health's contact tracing investigations have shown that apart from long term care settings, bars and restaurants are among the settings most frequently associated with COVID-19 outbreaks in Minnesota. Specifically, the Minnesota Department of Health has already traced 448 COVID-19 outbreaks⁴ and 4,145 confirmed cases of COVID-19 to bars and restaurants in Minnesota.

24. Minnesota has had success in keeping its infection rate and mortality count relatively lower than some other areas, in part through its outreach to educate Minnesotans on the restrictions in place, and in part by placing certain restrictions on activities that are more likely to result in spread of the virus like large events and fully occupied bars or restaurants with people from different households congregating in close proximity. Nevertheless, Minnesota is currently experiencing some of the highest numbers of COVID-19 cases since the beginning of the pandemic. Minnesota's attempts to slow the spread of COVID-19 are an attempt to protect the health and safety of its residents. These efforts have been deemed necessary by the Governor, including in Dakota County.

⁴ The outbreak threshold MDH has established for bars and restaurants is seven or more COVID-19 cases from different households that report visiting the bar or restaurant within one month. On November 13, 2020, the threshold was lowered to five or more COVID-19 cases from different households that report visiting only the bar/restaurant within one month.

25. On March 13, 2020, Governor Tim Walz declared a peacetime emergency as a result of the COVID-19 pandemic. At its emergency meeting on March 16, the Executive Council of the State of Minnesota approved the peacetime emergency to protect Minnesotans from COVID-19. The peacetime emergency was most recently extended and approved by the Executive Council until at least through December 14, 2020, pursuant to Executive Order 20-97.

26. In order to protect public health and safety by slowing the “community spread” of COVID-19, on November 18, 2020, Governor Walz issued Executive Order 20-99, which, in relevant part, orders that “restaurants, . . . bars, . . . and other Places of Public Accommodation offering food, beverages (including alcoholic beverages), or tobacco products for on-premises consumption are closed to ingress, egress, use, and occupancy by member of the public, except as set forth below.” Executive Order 20-99 goes on to specify that restaurants and bars may “permit up to five members of the public at one time . . . for the purpose of picking up their food or beverage orders.” On-premises consumption is temporarily prohibited, as is any occupancy above five members of the public waiting for their orders, until December 18, 2020 at 11:59 p.m. Executive Order 20-103 extends most of the temporary restrictions of Executive Order 20-99 to January 10, 2020 at 11:59 p.m., but permits restaurants to provide outdoor, on-premises consumption services at less than 50% capacity, no more than four customers seated at one table, and not during the hours of 10:00 p.m. – 4:00 a.m. starting on December 18, 2020 at 11:59 p.m.

27. Executive Order 20-99 was promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), was approved by the Executive Council, and filed in the Office of the Secretary of State. Thus, pursuant to Minnesota Statutes section 12.32, Executive Order 20-74 has “the full force and effect of law” during the peacetime emergency. Moreover, Executive Order 20-99 authorizes the Attorney General to enforce its

provisions and seek any relief available pursuant to Minnesota Statutes section 8.31, including civil penalties up to \$25,000 per occurrence, costs of investigation and attorney's fees and costs, and injunctive relief.

II. DEFENDANT ALIBI DRINKERY VIOLATED EXECUTIVE ORDER 20-99.

28. On December 15, 2020, the Minnesota Attorney General's Office received information that Alibi Drinkery planned to open to members of the public for on-premises consumption of food and beverages (including alcoholic beverages) in violation of Emergency Executive Order 20-99.

29. On that same day, the Minnesota Attorney General's Office sent a letter to Alibi Drinkery informing it of the potential consequences for violating the Executive Order, including facing a civil enforcement action seeking injunctive relief and civil penalties of up to \$25,000 for each and every occurrence of an Executive Order 20-99 violation, as well as its attorney's fees and costs (including costs of investigation). Further, the letter explained that the Minnesota Department of Public Safety has provided public notice to license holders that compliance with Executive Order 20-99 is mandatory and non-compliance can result in the suspension or even revocation of a liquor license. The letter requested a written response confirming compliance by noon on December 16, 2020. No response was received.

30. Beginning on December 16, 2020, at 11:00 a.m. and continuing as of the date of this Complaint, Defendant Lionheart L.L.C., d/b/a Alibi Drinkery which owns and operates a bar/restaurant in Lakeville, MN, has opened to ingress, egress, use, and occupancy by more than five members of the public, as well as for the on-premises consumption of food and beverages (including alcoholic beverages), in direct violation of Emergency Executive Order 20-99.

31. On December 15, 2020 at 11:05 p.m., Defendant posted the following on its public Facebook account:



32. Alibi Drinkery opened at 11:00 a.m. on Wednesday, December 16, 2020, to the public for on-premises consumption. The Star Tribune reported and documented in photos an overflow crowd. Photos capture mostly unmasked patrons packing every table and the bar area with standing-room only.

33. Co-owner Lisa Zarza told the newspaper she intended to keep serving until 2 a.m., her normal closing time and if officials showed up to tell her otherwise, she said “You know what? We’ll see them in court.”

34. Governor Walz’s Emergency Executive Order 20-99 was issued to slow the community spread of COVID-19 and thereby protect public health and safety. This includes, in part, requiring settings that are especially high risk for the easy transmission of COVID-19 from person to person and out into the community to temporarily close to on-premises dining and

restrict entry by members of the public to protect the public’s health and safety. Without such restrictions, the dangerous public health emergency Minnesota is currently facing would continue to worsen threatening the health, safety, and lives of Minnesotans. Attorney General Keith Ellison has authority to enforce Executive Order 20-99 and Executive Order 20-103 and brings this action to enjoin and remediate Defendant Lionheart, L.L.C. d/b/a Alibi Drinkery’s violations described herein.

COUNT I
VIOLATION OF EMERGENCY EXECUTIVE ORDER 20-99

1. Plaintiff re-alleges all prior paragraphs of this Complaint.
2. Paragraph 7.c.iii.(A)(1) of Executive Order 20-99 provides in relevant part:

c. Places of Public Accommodation. Places of Public Accommodation are subject to the following requirements and limitations:

...

iii. Certain Place of Public Accommodation Closed to Members of the Public. The following Places of Public Accommodation are closed to members of the public as set forth below. “Members of the public” means people who are not workers affiliated with the Place of Public Accommodation.

(A) Restaurants, food courts, cafes, coffeehouses, bars, . . . and other Places of Public Accommodation offering food, beverages (including alcohol beverages), or tobacco products for on-premises consumption are closed to ingress, egress, use, and occupancy by members of the public, except as set forth below.

1. The above establishments may, and are encourages to, offer food and beverage using delivery services, window service, walk-up service, drive-through service, or drive-up service. In offering food or beverage service under this paragraph, a Place of Public Accommodation may permit up to five members of public accommodation for the purpose of picking up their food or beverage orders. All such establishments must[] follow the requirements for all businesses set forth below and industry-specific guidance available on the Stay Safe Minnesota website (<https://staysafe.mn.gov>).

2. Because indoor dine-in service is prohibited at restaurants, for the purposes of Minnesota Laws 2020, Chapter 75, Limited Off-Sale for Restaurants Closed by Executive Order, nothing in this Executive Order constitutes, prescribes, or should be deemed as, the expiration, termination, or rescission of the closure of restaurants as set forth in Executive Order 20-04, as modified and extended by Executive Orders 20-18 and 20-33, or any subsequent order. As set forth in Minnesota Laws 2020, Chapter 75, limited off-sale of alcoholic beverages is authorized only for take-out service with a prepared take-out food order, and delivery is not authorized.

3. Defendant is a “Place of Public Accommodation” as defined by Executive Order 20-99 paragraph 5.f because Defendant is a business (as defined by Executive Order 20-99 paragraph 5.c) whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

4. Defendant is a restaurant or bar, as those terms are used in Executive Order 20-99 paragraph 7.c.iii.A, because Defendant offers food or beverages for on-premises consumption and thus must be closed to ingress, egress, use, and occupancy by members of the public from November 20, 2020 at 11:59 pm at least until December 18, 2020 at 11:59 pm, except that Defendant may permit up to five members of the public at one time for the purpose of picking up to-go food or beverage orders.

5. On December 16, 2020, Defendant provided on-premises consumption of food or beverages to the public, and has allowed more than five members of the public in the bar/restaurant at any one time.

6. Defendant’s conduct, practices, and actions described in this Complaint constitute multiple, separate violations of Emergency Executive Order 20-99.

PRAYER FOR RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to award judgment against Defendant as follows:

1. Declaring that Defendant's actions, as set forth above, constitute multiple, separate violations or threatened violations of Emergency Executive Order 20-99;

2. Enjoining Defendant and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parents or controlling entities, subsidiaries, and all other persons acting in concert or participation with them, from engaging in any conduct in violation or threatened violation of Emergency Executive Order 20-99 or any future Executive Orders relating to restaurants, bars, or similar facilities;

3. Awarding judgment against Defendant for restitution, disgorgement, and/or damages to the State under the *parens patriae* doctrine, the general equitable powers of this Court, Minnesota Statutes section 8.31, and any other authority, for all violations described in this Complaint;

4. Awarding judgment against Defendant for civil penalties of up to \$25,000 pursuant to Minnesota Statutes section 8.31, subdivision 3, and section 645.24, for each separate violation of Emergency Executive Order 20-99;

5. Awarding the State of Minnesota its costs, including litigation costs, costs of investigation, and attorneys' fees, as authorized by Minnesota Statutes section 8.31, subdivision 3a; and

6. Granting such further relief as provided by law or equity or as the Court deems appropriate and just.

Dated: December 17, 2020

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Elizabeth Odette
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MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211.

/s/ Elizabeth Odette
ELIZABETH ODETTE