

STATE OF MINNESOTA
 COUNTY OF POLK

DISTRICT COURT
 NINTH JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 60-CV-20-2039

Plaintiff,

vs.

**[PROPOSED] FINDINGS OF FACT,
 CONCLUSIONS OF LAW,
 AND TEMPORARY RESTRAINING
 ORDER**

Boardwalk Bar and Grill, LLC,

Defendant.

The above-titled matter came before the undersigned Judge of the District Court on December 11, 2020, upon the *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction brought by the State of Minnesota, by its Attorney General Keith Ellison (“the State”), against Boardwalk Bar and Grill, LLC.

The Court has considered the pleading, exhibits, files, records, arguments, submissions of the State, and the affidavits the State submitted to the Court.¹ The Court accordingly makes the following findings of fact, conclusions of law, and enters the following Order:

FINDINGS OF FACT

1. Defendant, Boardwalk Bar and Grill, LLC located at 415 2nd Street NW, East Grand Forks, MN 56721 (“Boardwalk”) is a bar/restaurant that offers food and beverage for on-premises consumption.

¹ The Court considered the affidavits of Assistant Attorney General Noah Lewellen and Investigator Nina Grove at the Minnesota Attorney General’s Office, and Epidemiologist Richard Danila at the Minnesota Department of Health.

2. The COVID-19 pandemic represents one of the greatest public health emergencies Minnesota has endured in recent history. The disease is dangerous and has already killed 4,198 Minnesotans. (Lewellen Aff. Ex. 3.) The disease is also virulent and prone to community spread, with at least 367,218 cases confirmed in Minnesota since March 5, 2020. (*Id.*) The disease has picked up its pace in recent months, setting records in numbers of new infections. (*Id.*) The Minnesota Department of Health notes that preventing people from coming in close contact with one another indoors, such as dining inside a restaurant, is critical in stemming community spread of COVID-19. (Danila Aff. at ¶¶3-8.)

3. Emergency Executive Order 20-99 temporarily prohibits restaurants from being open to the public for on-premises consumption of food or beverage from November 20, 2020 at 11:59 p.m. through December 18, 2020 at 11:59 p.m. (Lewellen Aff., Ex. 7.)

4. Defendant has violated and indicated that it will continue to violate Executive Order 20-99, by remaining open to the public for on-premises dining. ((Lewellen Aff. Exs. 1, 15; Grove Aff. Ex. A.) Despite communications from both the Minnesota Department of Health and East Grand Forks Police Department that remaining open and offering on-premises consumption to the public would violate Executive Order 20-99, Defendant has continued to serve customers food and beverages for on-premises consumption. (Lewellen Aff., Exs. 1, 15.) Defendant has posted on its public Facebook page that, as of December 9, 2020, it would be open “Tuesday through Saturday” for “dine-in services” from 4:00 to 11:00 p.m. (Grove Aff., Ex. A.)

5. The Attorney General’s Office now asks this Court to grant a Temporary Restraining Order and Temporary Injunction to enjoin Defendant from remaining open to ingress, egress, use, and occupancy by members of the public in violation of Executive Order 20-99.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case and the parties hereto and makes the following Conclusions of Law.

2. On November 18, 2020, Governor Tim Walz issued Emergency Executive Order 20-99, which places restrictions on certain Places of Public Accommodation, including temporarily closing restaurants and bars to on-premises consumption through Friday, December 18, 2020 at 11:59 pm. 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 20-99 has “the full force and effect of law” during the peacetime emergency.

3. 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 “injunctive relief, civil penalties in an amount to be determined by the court, up to \$25,000 per occurrence, costs of investigation and reasonable attorney’s fees and costs, and other equitable relief as determined by the court” Among other relief, Minnesota Statutes section 8.31, subdivision 3 provides in pertinent part:

On becoming satisfied that any of those laws has been or is being violated, or is about to be violated, the attorney general shall be entitled, on behalf of the state; (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation

Minn. Stat. § 8.31, subd. 3.

THE STATE IS ENTITLED TO A TEMPORARY RESTRAINING ORDER PURSUANT TO MINNESOTA RULE OF CIVIL PROCEDURE 65.01.

4. The State has filed an emergency consumer-protection action to enforce Governor Walz’s Emergency Executive Order 20-99 (“Order 20-99”), which places restrictions on certain

Places of Public Accommodation, including temporarily prohibiting bars and restaurants from opening to the public for on-premises consumption through Friday, December 18, 2020 at 11:59 pm. The express purpose of the Order is to slow the spread of the COVID-19 virus in order to protect public health and safety. The State has also moved the Court for a temporary restraining order (“TRO”) pursuant to Minn. R. Civ. P. 65.01. Requests for TROs and temporary injunctions are generally evaluated under the same standards. *Compare Minneapolis Urban League, Inc. v. City of Minneapolis*, 650 F. Supp. 303, 303 (D. Minn. 1986) (Reviewing TRO request), with *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *rev’w denied* (Minn. Feb. 4, 2002) (reviewing temporary injunction request).

5. The State seeks temporary injunctive relief as authorized by statute pursuant to section 8.31 as well as Order 20-99; accordingly there is no need to make findings on the *Dahlberg* factors and instead the Court can grant temporary injunctive relief upon a showing that Defendants “violated or were about to violate the statutes involved” and that “injunctive relief would fulfill the legislative purpose of the statutes.” *State v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 572 (Minn. Ct. App. 2005) (quoting *Wadena Implement Co. v. Deere & Co., Inc.*, 480 N.W.2d 383, 389 (Minn. App. 1992)); *accord State v. Minn. School of Business, Inc.*, 899 N.W.2d 467, 471-72 (Minn. 2017).

6. There is good cause to believe that the State will likely prevail on the merits of its claims that Defendant is violating and about to further violate Order 20-99. The State has submitted evidence showing that Defendant Boardwalk, a Minnesota restaurant, is offering on-premises consumption of food and beverages. (Lewellen Aff. Exs. 1, 15; Grove Aff. Ex. A.) Those actions clearly violate, or threaten to violate, Executive Order 20-99. Accordingly, the State is likely to prevail on the merits that Defendant has violated and is about to violate Executive Order

20-99. Exec. Order 20-99, ¶ 7.c. iii. A. (“Restaurants ... 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 members of the public.”)

7. There is good cause to believe that the temporary injunctive relief the State seeks would fulfill the purposes of Order 20-99. The purpose of Order 20-99 is to slow the spread of the COVID-19 virus in order to protect public health and safety. Order 20-99 promotes public health and safety by restricting avenues of viral transmission at locations where such transmission is likely to occur, like at restaurants and bars. The temporary injunctive relief ordered by the Court will help protect the public’s health and safety as well as the health and safety of Defendants’ patrons by temporarily closing Boardwalk for on-premises dining in accordance with Executive Order 20-99 and requiring Defendant to comply with the safety requirements in Executive Order 20-99 and any future Executive Orders pertaining to bars or restaurants. It also protects this Court’s ability to grant full and effective relief among the parties.

8. Furthermore, the State has established that it is entitled to not only temporary injunctive relief but to a TRO, before Defendant can be heard in opposition, pursuant to Minn. R. Civ. P. 65.01. It is clear from the facts shown by the State that Defendant’s patrons and the general public will suffer irreparable harm unless Defendant is temporarily enjoined from opening for on-premises dining in violation of Emergency Executive Order 20-99.

9. No security is required of the State of Minnesota for issuance of a temporary restraining order. *See* Minn. Stat. § 574.18; *State v. Nelson*, 189 Minn. 87, 89-90 (1933).

ORDER

I. TEMPORARY RESTRAINING ORDER.

WHEREFORE, IT IS HEREBY FURTHER ORDERED THAT:

1. The State's motion for a temporary restraining order pursuant to Minnesota Rule of Civil Procedure 65.01 is **GRANTED**.

2. Effective from the date of this Order, Defendant and its officers, agents servants, employees, and other persons in active concert or participation with Defendant who receives actual notice of this Order are prevented, restrained, and enjoined from taking any action violating Executive Order 20-99, including but not limited to offering on-premises consumption of food or beverages.

3. Defendants shall fully comply with Executive Order 20-99 and any future Executive Orders issued by the Governor, approved by the Executive Council, and filed in the Office of the Secretary of State in accordance with Minnesota Statutes Chapter 12 that apply to restaurants and/or bars.

II. CORRESPONDENCE AND SERVICE ON PLAINTIFF.

4. IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence and service of notices on the Plaintiff shall be addressed to:

Assistant Attorney General Jason Pleggenkuhle
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
jason.pleggenkuhle@ag.state.mn.us

III. TEMPORARY INJUNCTION HEARING.

5. IT IS FURTHER ORDERED that, pursuant to Minn. R. Civ. P. 65.01, counsel for Plaintiff and Defendants shall appear before this Court on December 16, 2020, at 9:00 a.m., [the

Polk County Courthouse, 816 Marin Avenue, Suite 210, Crookston, MN 56716 / Via Teleconference] for a hearing on Plaintiff's motion for a temporary injunction pending final ruling on the Complaint against Defendant and imposing such additional relief as may be appropriate.

6. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes and this Order shall remain in effect until further order of the Court.

Dated:

The Honorable Judge Corey A. Harbott
Judge of District Court