

STATE OF MINNESOTA
COUNTY OF FARIBAULT

DISTRICT COURT
FIFTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

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

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Veteran Enterprises, Ltd., d/b/a Carlson Event
Center,

Defendant.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against Defendant Veteran Enterprises, Ltd. d/b/a Carlson Event Center (collectively, hereinafter Carlson Event Center) 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 through January 13, 2021 pursuant to Executive Order 20-100. 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.”

2. In relevant part, Executive Order 20-99 temporarily prohibits venues providing indoor events and entertainment, such as concert halls and performance venues, from being open to the public. On December 16, 2020, noting falling infection rates but consistently high daily case counts, Governor Walz issued Executive Order 20-103, which, beginning at 11:59 p.m. on December 18, 2020, extended the indoor venues of Executive Order 20-99 to January 10, 2021, but modified the restrictions to allow for outdoor events (collectively, hereinafter “Modified Executive Order 20-99”).

3. Despite Executive Order 20-99’s express restrictions, which have the full force and effect of law, Carlson Event Center, which owns and operates an event center in Winnebago, has advertised that it will hold a “New Years Eve Bash” and “dance,” selling entry for \$25 and suggesting that attendees bring their own beer and liquor to drink on-site.

4. Modified Executive Order 20-99’s prohibitions on indoor events and entertainment are necessary to protect public health and safety during the ongoing COVID-19 pandemic. COVID-19 is easily transmissible and deadly. Concert halls and performance venues—where people gather for long periods in close proximity, exert themselves through dancing, and do not wear masks while drinking—pose a particularly high risk of COVID-19 transmission. Despite the public health harm this poses to Minnesotans, Carlson Event Center has advertised that it will hold a “New Years Eve Bash” concert in its venue and that attendees should bring their own beer and liquor for an event stretching from 8pm until 2am.

5. In short, Defendant is ignoring the risks of the virus and has disregarded the prohibitions established by Modified Executive Order 20-99 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 Modified Executive Order 20-99, and enjoining Carlson Event Center from

allowing members of the public to enter or use Carlson Event Center’s venue for a “New Years Eve Bash”, as well as from further violating Modified Emergency Executive Order 20-99.

PARTIES

6. 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 Modified 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 Modified Emergency Executive Order 20-99.

7. Defendant Veteran Enterprises, Ltd. is a business with its principal executive office at 10 West Main St., Suite 200, Madelia, Minnesota 56062, and its chief executive officer is Garth Carlson. Defendant Veteran Enterprises, Ltd., owns the property located at 132 1st Ave. SE, Winnebago, Minnesota 56098, where it does business as Carlson Event Center.

JURISDICTION AND VENUE

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

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

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

11. 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.

12. COVID-19 kills people. In Minnesota alone, as of December 29, 2020, COVID-19 has already caused at least 5,321 deaths. 413,107 confirmed and probable cases have been reported across the state with 28,901 of those positive cases reported in the first week of December alone.²

13. Minnesota is 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.

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 29, 2020*, MINN. DEPT. OF HEALTH, <https://www.health.state.mn.us/diseases/coronavirus/situation.html>.

14. 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. Surging COVID-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.

15. In Faribault County, at least 10 individuals have passed away due to COVID-19 and 886 have tested positive.⁴ The 14-day case rate per 10,000 people has jumped dramatically from 46.06 for the reporting period of October 18, 2020 to October 31, 2020, to 141.77 for the reporting period of November 29, 2020 to December 12, 2020. This is the deadly backdrop against which the Defendant has decided to violate Modified Executive Order 20-99, which is in place to stem community spread of a virus, and unlawfully remain open to the public for a New Year’s Day “bash.”

16. COVID-19 can easily be spread through respiratory droplets exhaled into the air, especially by those individuals not wearing face coverings. And while face coverings are helpful in reducing those airborne droplets, masks are not perfect, and additional factors, like heavy breathing associated with exertion, loud talking or yelling, and extended close contact with

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/>.

⁴ The U.S. Census Bureau estimates that Faribault County had 13,653 people living in it as of July 2019, which suggests that over 6% of all people in Faribault County have already tested positive for COVID-19. *See Quick Facts – Faribault County, Minnesota*, U.S. CENSUS BUREAU (last accessed Dec. 29, 2020), *available at* <https://www.census.gov/quickfacts/faribaultcountyminnesota>.

individuals from other households all contribute to the community spread of COVID-19 among even masked individuals. Thus, entertainment or event activities in indoor venues in Minnesota continue to pose substantial risks to public health and safety.

17. Venues hosting indoor events and entertainment, particularly those that permit on-premises consumption of food or beverage, pose a particularly high risk of COVID-19 transmission because they allow people to gather and congregate around people from different households to eat and drink 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 in venues while talking. Indoor venues 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 indoor venues later at night when individuals are more prone to move about and mingle within these establishments, and even more so when the establishment encourages dancing. Dancing, in particular, is dangerous because the science shows that people in proximity to one another, breathing heavily and exerting themselves increases the risk of community spread of COVID-19. All of these factors make indoor venues providing events or entertainment high risk for the easy transmission of COVID-19.

18. Researchers in Korea have already studied the consequences of prematurely reopening indoor entertainment venues. One such study found that the reopening of night clubs in Seoul during a “postpeak period” resulted in “superspreading related to visiting nightclubs in Seoul” that had the “potential to spark a resurgence of cases in South Korea.” The researchers identified 67 individuals who had gone to night clubs and subsequently tested positive, and,

alarming, researchers identified an additional 51 people who appear to have been subsequently infected by the original clubgoers.

19. Studies involving analogous situations in restaurants underscore just how virulent COVID-19 is. 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 have not been identified.

23. 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 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 Faribault County.

24. 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 January 13, 2021, pursuant to Executive Order 20-100.

25. 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 "venues providing indoor events and entertainment such as . . . concert halls . . . [and] performance venues . . . are closed to ingress, egress, use, and occupancy by members of the public" until December 18, 2020 at 11:59 p.m.

26. On December 16, 2020, Governor Walz issued Executive Order 20-103 which, in relevant part, extended Executive Order 20-99's provisions, including the Executive Order 20-99's

prohibition on the opening of venues providing indoor events and entertainment to the public, and its enforcement provisions to January 10, 2021. In issuing Modified Emergency Executive Order 20-99 the order noted improvements in Minnesota’s infection rate, due, in part to the restrictions of Executive Order 20-99, but Governor Walz also specifically considered the “alarming levels of community spread” of the virus. Modified Emergency Executive Order 20-99 prohibits venues from providing indoor events and entertainment, but modified Executive Order 20-99 to allow for outdoor events, with restrictions.

27. Executive Orders 20-99 and Executive Order 20-103 were promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), were approved by the Executive Council, and filed in the Office of the Secretary of State. Thus, pursuant to Minnesota Statutes section 12.32, Modified Executive Order 20-99 has “the full force and effect of law” during the peacetime emergency. Moreover, Modified 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. CARLSON EVENT CENTER HAS THREATENED TO VIOLATE MODIFIED EXECUTIVE ORDER 20-99.

28. Carlson Event Center has advertised that it will be holding a “New Years Eve Bash” on December 31st for “all ages,” encouraging attendees to “bring your own beer and liquor,” and “B.Y.O.B.” (i.e., Bring Your Own Beverages):

CARLSON EVENT CENTER
Dec. 31st New Year Eve.

ALL AGES WELCOME

\$25



PRESTIGIO
DEL NORTE

Lleva tu propia cerveza y licor



B.Y.O.B.



WINNEBAGO, MN
3203303702 132 1st Ave. S.E.



29. The advertisement touts the band Prestigio del Norte, and describes the “bash” as being held from 8pm to 2am. The advertisement indicates there will be a \$25 fee to enter.

30. The individual who posted the advertisement told the Attorney General’s Office that he had been hired by Carlson Event Center’s owner, Garth Carlson, to advertise the event on Facebook. The event’s Facebook page indicates that this event is “gran baile de año nuevo,” a “big new year’s dance.”

31. On December 29, 2020, the Attorney General’s Office attempted to contact Carlson Event Center representatives Garth Carlson and Megan Zimmerman by phone and by email, but the Office’s voicemails and emails were not returned. On the same day, the Attorney General’s Office sent Carlson Event Center representatives Garth Carlson and Megan Zimmerman an emailed letter explaining Modified Executive Order 20-99 and requesting that Carlson Event Center comply with the Order and provide a response by noon on December 30, 2020. The Office did not receive a response.

32. Governor Walz’s Emergency Executive Orders 20-99 and 20-103 were 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 close to 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 Modified

Emergency Executive Order 20-99, and brings this action to enjoin Defendant Carlson Event Center's threatened violations described herein.

COUNT I
THREATENED VIOLATION OF EMERGENCY EXECUTIVE ORDER 20-99, AS
EXTENDED AND MODIFIED BY 20-103

1. Plaintiff re-alleges all prior paragraphs of this Complaint.
2. Paragraph 7.c.iii.(D) 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.

(D) Venues providing indoor events and entertainment such as theaters, cinemas, concert halls, festivals, fairs, vendor fairs, museums, performance venues, stadiums, arcades, and bowling alleys are closed to ingress, egress, use, and occupancy by members of the public. Such establishments may, and are encourages to, use their facilities to provide virtual or remote programming.

3. Executive Order 20-103 modified the above provision as follows:

(B) Venues providing indoor events and entertainment (whether permanent, temporary, or mobile) such as theaters, cinemas, concert halls, festivals, fairs, vendor fairs, museums, performance venues, stadiums, arcades, trampoline parks, party buses, and bowling alleys are closed to ingress, egress, use, and occupancy by members of the public. Such establishments may, and are encourages to, use their facilities to provide virtual or remote programming.

4. Defendant are "Places of Public Accommodation" as defined by Executive Order 20-99 paragraph 5.f because Defendant are businesses (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.

5. To the extent Defendant are hosting an indoor concert, Defendant are “venues providing indoor events and entertainment,” as that term is used in Modified Executive Order 20-99, and may not open to ingress, egress, use, and occupancy by members of the public from November 20, 2020 at 11:59 pm at through January 10, 2021.

6. Despite these temporary restrictions, Defendant have advertised and represented that on December 31, 2020, their event center will extend, offer, sell, and otherwise make available to the public a New Year’s Eve Bash (including live music performances) from 8:00 p.m. until 2:00 a.m. for a \$25 entrance fee and that attendees are invited to bring their own liquor and beer to this entertainment event.

7. Defendant’s conduct, practices, and actions described in this Complaint constitute multiple, separate threatened violations of Modified 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 and/or threatened violations of Modified 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 Modified Executive Order 20-99, or any future Executive Orders relating to indoor venues providing events or entertainment 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 threatened 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 and/or threatened violation of Modified 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 30, 2020

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Noah Lewellen

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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/ Noah Lewellen
NOAH LEWELLEN