

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WABASHA

THIRD JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

House of Iron, LLC d/b/a Plainview Wellness
Center,

Defendant.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against House of Iron, LLC d/b/a Plainview Wellness Center (hereinafter, "Plainview Wellness 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 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 42 days. Thus, on November 18, 2020, Governor Walz issued 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 requires Places of Public Accommodation, including gyms, fitness centers, and exercise studios, to be closed to the public.

3. Despite Executive Order 20-99's express restrictions, which have the full force and effect of law, Plainview Wellness Center, a 24-hour fitness center and/or gym, has threatened to and has opened to the public by refusing to close its doors on or after November 21, 2020, to the approximately 200 members of the public who have gym memberships and those interested in signing up for new memberships.

4. Emergency Executive Order 20-99's prohibitions on opening fitness centers and gyms to the public are necessary to protect public health and safety during the ongoing COVID-19 pandemic. COVID-19 is easily transmissible and deadly. Fitness centers and gyms where individuals, frequently unmasked, congregate for extended periods while exhaling at an increased volume and rate, present substantial public health risks and are particularly fertile environments for the community spread of COVID-19. Despite that potential harm to Minnesotans, Plainview Wellness Center has refused to comply with Executive Order 20-99. Defendant promoted on the gym's Facebook page it would not be closing and would instead keep its regular schedule of being open 24-hours a day. In short, Plainview Wellness Center is ignoring the risks of the virus and have disregarded the prohibitions established by 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 Executive Order 20-99 and to enjoining Plainview Wellness Center from extending, offering, or otherwise making the gym available to the public at least until December 18, 2020 in accordance with Executive Order 20-99.

PARTIES

5. 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 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 Executive Order 20-99.

PARTIES

6. Defendant House of Iron, LLC, d/b/a Plainview Wellness Center, is a business with its Corporate Office Address at 53139 253rd Avenue, Plainview, MN 55964 and Principal Business Address 240 West Broadway, Plainview, MN 55964. Brandon Reiter is the principal owner of the Plainview Wellness Center.

JURISDICTION AND VENUE

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

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

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

10. 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.

11. COVID-19 kills people. In Minnesota alone, as of November 23, 2020, COVID-19 has already caused at least 3,265 deaths. 276,500 positive cases have been reported across the state with 6,353 of those positive cases reported just yesterday, November 23, 2020.²

12. Minnesota is currently experiencing 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 42 days to add an additional 100,000 new cases.

13. In the month of November 2020, Minnesota has been recording record numbers of daily new cases, hospitalizations, intensive care unit admissions, and deaths. 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 November 23, 2020*, MINN. DEPT. OF HEALTH, <https://www.health.state.mn.us/diseases/coronavirus/situation.html#map1>

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.

14. Minnesota's neighboring states, including Wisconsin, just across the river from Wabasha County, and less than a 30-minute drive from Plainview, MN, have been experiencing some of the highest number of cases per capita in the country.

15. In Wabasha County, the 14-day case rate per 10,000 people has jumped dramatically from 23.72 for the reporting period of September 13, 2020 to September 26 to 93.02 for the reporting period of October 25, 2020 to November 7, 2020. Distance learning is recommended for all school grade levels when the 14-day case rate per 10,000 people rises above 50.⁴ This is the deadly backdrop against which the Defendant has decided to defy an order intended to stem community spread of a virus and remain open to the public.

16. People in proximity to one another in a gym, breathing heavily, contributes to the spread of COVID-19. One study on a COVID-19 outbreak traced to fitness studios in South Korea noted that "[t]he moist, warm atmosphere in a sports facility coupled with turbulent air flow generated by intense physical exercise can cause more dense transmission of isolated

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 Data for K-12 Schools:14-day COVID-19 Case Rate by County Updated 11/19/2020, MINN. DEPT. OF HEALTH, <https://www.health.state.mn.us/diseases/coronavirus/stats/wschooll.pdf>

droplets.”⁵ Science shows us that exercise leads to higher levels of exertion and exhalation. Exercising individuals also frequently fail to wear a mask. That increased exertion and exhalation and resulting increase in airborne respiratory aerosol droplets provides more opportunities for COVID-19 to spread among people in gyms.

17. Even taking precautionary measures cannot completely prevent the spread of COVID-19 in gyms. When a spin studio in the Canadian city of Hamilton reopened in July of this year, they took several precautionary measures, reducing the number of stationary bikes by half, requiring masks when not riding (allowing them to be removed while exercising), and increasing sanitation measures. Yet from a single gym patron who was COVID-19 positive and asymptomatic while attending a spin class, as of October 26, 2020, that single case has spread to 54 primary cases (52 riders and two staff members) and at least 31 secondary cases such as family, friends or other contacts who were exposed to people infected there.⁶

18. 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

⁵ Jang et al., *Cluster of Coronavirus Disease Associated with Fitness Dance Classes, South Korea*, 26 EMERGING INFECTIOUS DISEASES 8 (August 2020) Available at https://wwwnc.cdc.gov/eid/article/26/8/20-0633_article.

⁶ Bobby Hristova, *Here's How the COVID-19 Outbreak at Hamilton Spin Studio Spinco Spread*,” CBC NEWS (October 19, 2020), available at: <https://www.cbc.ca/news/canada/hamilton/covid-19-spinco-outbreak-graphic-1.5767688>.

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 gym 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.

19. Minnesota Department of Health's contact tracing investigations have shown that apart from long term care settings, gyms are among the settings most frequently associated with COVID-19 outbreaks in Minnesota. Specifically, the Minnesota Department of Health has already traced 49 COVID-19 outbreaks⁷ and 750 confirmed cases of COVID-19 to gyms in Minnesota.

20. 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 restaurants with people from different households congregating in close proximity. Nevertheless, Minnesota is currently experiencing 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 Wabasha County.

21. 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

⁷ The outbreak threshold MDH has established for gyms is seven or more COVID-19 cases from different households that report visiting the gym within one month.

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.

22. 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 “gymnasiums, fitness centers, recreation centers, . . . and exercise studios are closed to ingress, egress, use, and occupancy by members of the public” from November 20, 2020 at 11:59 p.m. until at least December 18, 2020 at 11:59 p.m.

23. 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. PLAINVIEW WELLNESS CENTER VIOLATED EXECUTIVE ORDER 20-99.

24. Defendant Plainview Wellness Center, a 24-hour fitness gym, has remained open allowing its approximately 200 members to enter, occupy, and use its facilities, thus violating Executive Order 20-99. On its Facebook page, Plainview Wellness Center posted a calendar schedule for November which shows it hosting spin class approximately three times per week and Yoga approximately one time per week. This week spin class was scheduled for Monday, November 24, 2020, at 5:00 a.m. and Wednesday, November 26, 2020 at 7:00 a.m., with

Wednesday's dubbed the "Thanksgiving Turkey Trot Spin." On November 20, 2020, the Minnesota Attorney General's Office received a report that the Plainview Wellness Center planned to remain open to the public during the peacetime emergency and while Executive Order 20-99 is in effect, prohibiting such activity.

25. Plainview Wellness Center advertised on its Facebook page shortly after Executive Order 20-99 was announced on November 18, 2020 that it "will NOT be closing!" The post encouraged members to continue to use the gym in violation of the Executive Order.

26. On November 20, 2020, an Assistant Attorney General with the Minnesota Attorney General's Office called Plainview Wellness Center's owner Brandon Reiter to inquire whether it was his intent to stay open once the Executive Order went into effect. Mr. Reiter responded "Yes, I do plan to remain open."

27. When it was explained to him that remaining open would be in violation of Executive Order 20-99 and potentially subject him to an enforcement action, he said he was "sick of this f***ing bullshit."

28. When the Assistant Attorney General offered to explain the Minnesota Department of Health numbers linking certain confirmed cases of COVID-19 to fitness centers in Minnesota. He responded "[Y]our numbers are nothing but f***ing corrupt."

29. Mr. Reiter claimed that the Executive Order was unconstitutional and unjust. However, when it was suggested he could close the gym in compliance with the Executive Order and challenge the constitutionality of the Executive Order in Court if he wished to seek to open legally, he said he didn't care what the appropriate way to go about it was and reiterated his intent to stay open stating, "My doors will be open forever."

30. He said that he did not have any [COVID-19 positive] cases in his gym. The Assistant Attorney General explained that the Executive Order applied statewide regardless of whether a gym had experience with a COVID-19 positive case. He said “I’ll violate whatever I want. This is America.” He was then told that if there was evidence of non-compliance with the order, the Minnesota Attorney General’s Office would be in touch with him. He replied, “Perfect! Be in touch with me because I will not comply.”

31. Following the call, the Minnesota Attorney General’s Office sent him a letter via email requesting that he respond in writing that he would comply with Executive Order 20-99. He responded via e-mail shortly thereafter, “Refuse to sign. Unconstitutional injustice and unlawful.”

32. On November 23, 2020, an Investigator with the Minnesota Attorney General’s Office contacted the phone number listed for Plainview Wellness Center on its Facebook page. The Investigator asked if they were open. He confirmed that the fitness center would open and that he was scheduling member sign ups.

33. This is not the first time that Plainview Wellness Center has defied the Governor’s Executive Orders. On May 8, 2020, Reiter was interviewed by Fox 47, the Fox Affiliate in Rochester, MN, regarding his decision at that time to keep Plainview Wellness Center open to his approximately 200 gym members on May 1, 2020, in violation of the Governor’s Executive Orders in effect at the time.

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 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 brings this action to enjoin and remediate Plainview Wellness Center'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.(C) 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) Gymnasiums, fitness centers, recreation centers, indoor sports facilities, indoor climbing facilities, trampoline parks, indoor and outdoor exercise facilities, martial arts facilities, and dance and exercise studios are closed to ingress, egress, use, and occupancy by members of the public.

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 gym, fitness center, and/or exercise facility, as those terms are used in Executive Order 20-99 paragraph 7.c.iii.C, 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.

5. On and after November 21, 2020, Defendant has allowed members of the public to access Defendant's 24-hour fitness center and/or gym using the key-fobs provided to members, hosted classes, and invited new members to sign-up to join to gain access to the fitness center.

6. Defendant's conduct, practices, and actions described in this Complaint constitute multiple, separate violations of 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 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 Executive Order 20-99 or any future Executive Orders relating to gyms, fitness centers, 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 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: November 24, 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