

STATE OF MINNESOTA  
COUNTY OF AITKIN

DISTRICT COURT  
NINTH JUDICIAL DISTRICT

Case Type: Civil  
(Consumer Protection)

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

Court File No. \_\_\_\_\_

Plaintiff,

vs.

David LaPlant,

Defendant.

**MEMORANDUM IN SUPPORT OF THE  
STATE'S *EX PARTE* MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND TEMPORARY INJUNCTION**

The State of Minnesota, by its Attorney General, Keith Ellison, (the "State") brings this *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction against Defendant David LaPlant (hereinafter, "LaPlant").

**INTRODUCTION**

Residential tenants [REDACTED] and their three children ("Tenants") are stuck in a home with no functioning heating system because their landlord, David LaPlant, refuses to buy propane to heat the house. Worse, as overnight temperatures dipped below freezing, Tenants went several days without being able to use space heaters in much of their home because some of their electrical outlets were not functioning. When notified of the electrical problem, LaPlant, who was in Florida at the time, told Tenants to "figure it out" and continued his refusal to provide propane. Later, after finding out that Tenants had contacted the Minnesota Attorney General's Office and instead of buying propane, LaPlant sent a series of text messages to Tenants stating that Tenants "cut the hand that takes care of you." Because

these actions are illegal and create a dangerous situation for his tenants, The State seeks a temporary restraining order and temporary injunction to stop LaPlant from continuing to interrupt his Tenants' propane heat or otherwise attempt to terminate their residency at the home during the pendency of the State's enforcement action.

### **FACTUAL BACKGROUND**

Tenants live in the upper unit of a house owned by LaPlant in McGrath, Minnesota. (Bumann Aff. ¶1.) The house is heated with a propane heating system that serves both the upper and the lower units. (Bumann Aff. ¶3.) At all times during Tenants' tenancy, LaPlant has been responsible for supplying the propane. (Bumann Aff. ¶3.) LaPlant has an account with Lakes Gas to supply the propane. (Bumann Aff. ¶¶5-6.) Tenants have not have an account. (*Id.*)

The propane tank has been empty since March 16. (Bumann Aff. ¶4.) LaPlant refused to buy propane to fill the tank, stating that the downstairs tenant owed him rent. (*Id.*) With no other way to heat their home, Tenants resorted to space heaters, as they have had to do throughout their tenancy when LaPlant does not fill the propane tank. (Bumann Aff. ¶3, 7.)

Beginning on April 10, electrical outlets in the living room and bedroom began to fail. (Bumann Aff. ¶7.) Tenants texted LaPlant on April 10 to advise him that there was no electricity in the living room. LaPlant responded that Tenants should "figure it out." (Bumann Aff. ¶7.) Tenants also attempted to purchase the propane themselves, but were told they would have to pay LaPlant's overdue bill before they could purchase more propane for the home. Eventually, Tenants attempted to open their own account, and are still without propane at the time of this filing. (Bumann Aff. ¶5-6.)

Tenants reported this matter to the Attorney Generals' Office ("AGO") on April 15. AGO staff repeatedly attempted to contact LaPlant by phone, e-mail, and text message.

(Goodwin Aff. ¶¶2-3.) LaPlant never answered his cell phone, and his voicemail box was full each time AGO staff tried to call. (Goodwin Aff. ¶¶3-6.) In response to text messages from AGO staff, LaPlant sent a series of ambiguous texts that indicated he or his lawyer would call the AGO on April 16. (Goodwin Aff. ¶¶4-5, Exh. B.) Assistant Attorney General Michael Goodwin received a voicemail from LaPlant’s number on the afternoon of April 16, but the voicemail did not have any content, and LaPlant did not pick up either of the subsequent phone calls place by Assistant Attorney General Goodwin. (Goodwin Aff. 6.) LaPlant did, however, send a text message to Tenants asking which one of them called the Attorney General’s Office. On April 17, LaPlant sent Tenants text messages about sending his friend, the county sheriff, and county child care to Tenants’ home. (Bumann Aff. ¶¶ 9-10, Exh. A.) A subsequent text read “[a]ll you did is cut the hand that takes care of you,” followed by one that read “[y]ou’ll c.” (*Id.*)

## ARGUMENT

### **I. A TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION ARE APPROPRIATE TO ENJOIN LAPLANT.**

#### **A. LaPlant Has and Continues to Violate Governor Walz’s Executive Order 20-14, as well as Minnesota Statutes Sections 504B.161 and 504B.221, Necessitating Temporary Injunctive Relief.**

Temporary injunctive relief should be issued upon a showing by the State that LaPlant “violated” or is “about to violate” the law and when injunctive relief would fulfill the purpose of the law. *See 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. Ct. App. 1992)); accord *State v. Minn. School of Business, Inc.*, 899 N.W.2d 467, 471-72 (Minn. 2017)

(recognizing “[t]he conditions that must be met to grant a statutory injunction are determined by the text of the statute authorizing the injunction.”).<sup>1</sup>

Here, the State brings this law enforcement action against LaPlant for causing the interruption of Tenants’ heat service in violation of Minnesota Statutes section 504B.221; failing to keep his property fit for its intended use and in reasonable repair in violation of 504B.161, and for constructively evicting his Tenants in violation of Governor Walz’s Emergency Executive Order 20-14 (“Order 20-14”). Order 20-14 expressly provides that it can be enforced by the Minnesota Attorney General’s Office (AGO) pursuant to its Minnesota Statutes section 8.31 authority. Section 8.31 authorizes the AGO to obtain injunctive relief upon bringing an action to enforce and remediate violations of the unfair, discriminatory, and other unlawful practices in business, commerce, or trade.<sup>2</sup> *Id.* at § 8.31, subd. 3; *accord Minn. School of Business, Inc.*, 899 N.W.2d at 472.

Accordingly, the State is entitled to a temporary restraining order (TRO) and temporary injunction (TI) by showing that: (1) LaPlant violated, is violating, or will violate Minnesota

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<sup>1</sup> Only when a law does not provide for injunctive relief are courts to evaluate the *Dahlberg* factors to determine whether sufficient grounds exist to issue a TRO or temporary injunction. *Cross Country Bank*, 703 N.W.2d at 573 (when statutes specifically provide for injunctive relief court is “not required to make findings on the *Dahlberg* factors to enjoin violation of the statute.”). Where a party “legitimately disputes” the applicability of the underlying statute authorizing injunctive relief, a district court “is not required” to grant a temporary injunction without consideration of the *Dahlberg* factors. *See State v. Int’l Assoc. of Entrepreneurs of Am.*, 527 N.W.2d 133, 137 (Minn. App. 1995) (citing *Pac. Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 918 (Minn. App. 1994)). This narrow exception, however, has no application to this case because LaPlant cannot legitimately dispute that his conduct is not subject to Minnesota Statutes chapter 504B or Order 20-14.

<sup>2</sup> Likewise, the Attorney General has authority to enforce violations of Chapter 504B through section 8.31, because Chapter 504B is a consumer protection law respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade. *See Minn. Stat. § 8.31, subd. 1;*

Statutes section 504B.221, 504B.161 and/or Order 20-14; and (2) the injunctive relief sought by the State would fulfill the purpose of the statute and Order.

LaPlant has violated and continues to violate Minnesota Statutes section 504B.221, 504B.161, and/or Order 20-14 by refusing to restore propane heat and electrical service to his residential tenants. The shutting off of a utility is a constructive eviction because it interferes with the use or enjoyment of the premises. *Colonial Court Apartments, Inc. v. Kern*, 163 N.W.2d 770; (1968); *Santrizos v. Public Drug Co.*, 173 N.W. 563 (1919) (“When the beneficial enjoyment of leased premises is so interfered with by the lessor as fairly to justify an abandonment by the lessee there is a constructive eviction. It does not suppose an actual ouster or dispossession by the lessor.”).

Lastly, the temporary injunctive relief the State requests undoubtedly would fulfill the purposes of Minnesota Statutes section 504B.221, 504B.161 and Order 20-14 by preventing further harm while the State prosecutes LaPlant’s misconduct. *See, e.g., Philip Morris*, 551 N.W.2d at 495-96. The express purpose of Order 20-14 is to keep Minnesotans housed during the COVID-19 pandemic for their own health as well as the health of the community. Accordingly, the court should grant the State’s motion for temporary injunctive relief preventing LaPlant from continuing to interrupt his tenant’s propane heat and electricity service in violation of Minn. Stat. §§ 504B.161, 504B.211 and Executive Order 20-14.

**B. Temporary Injunctive Relief is Necessary Before LaPlant Can Be Heard in Opposition, Necessitating an *Ex Parte* TRO.**

The function of a TRO and TI is to preserve the status quo until the matter is adjudicated on the merits. *Prolife Minnesota v. Minnesota Pro-Life Committee*, 632 N.W.2d 748, 753 (Minn. Ct. App. 2001) (discussing purpose of TRO); *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220 (Minn. App. 2002) (discussing purpose of temporary

injunction). In order to obtain temporary injunctive relief before LaPlant can be heard in opposition (*i.e.* an *ex parte* TRO), the State must show that:

(1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required.

Minn. R. Civ. P. 65.01.

Immediate and irreparable injury will result if the State is required to wait until LaPlant can be heard in opposition to the State's request for injunctive relief authorized by Minnesota Statutes section 8.31 and Order 20-14. The tenant's home is not habitable without heat. Aitkin County weather data since March 16 shows low temperatures well below freezing and frequently in the teens. (Goodwin Aff. Exh. C.) Each day that LaPlant is not enjoined from his illegal actions causes his tenants irreparable harm and potentially affects the public health because the tenants (and their children) are forced to shelter-in-place without heat during the pandemic. *See F.T.C. v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989) (injunction requiring compliance with the law during pendency of litigation imposes no hardship).

The State has met all required elements for a TRO enjoining LaPlant from preventing his tenants from receiving propane heat and electrical service. Accordingly, the Court should grant the State's Motion for a TRO and schedule a TI hearing at the earliest practical time.<sup>3</sup> Minn. R. Civ. P. 65.01 (If a TRO is granted without notice to an opposing party, "the motion for a

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<sup>3</sup> Despite the requirements for security set forth in Minn. R. Civ. P. 65.03(a) and Minn. Stat. § 570.041, subd. 1, the State is entitled to temporary injunctive relief without the giving of a security or bond. *See* Minn. Stat. § 574.18 ("No undertaking or bond need be given upon any appeal or other proceeding instituted in favor of the state . . . ."); *State v. Nelson*, 189 Minn. 87, 89-90, 248 N.W. 751, 752 (1933) (recognizing the term "proceeding" includes "every proceeding before a competent court in the due course of the proper administration of justice and which is to result in any determination.").

temporary injunction shall be set down for hearing at the earliest practicable time...and when the motion comes on for hearing, the party who obtained the [TRO] shall proceed with the application for a temporary injunction.”)

**C. The State is Likely to Succeed on the Merits of its Case.**

As discussed *supra* the State has established that LaPlant’s termination of propane heat and electrical services to his residential tenants violates Minnesota Statutes section 504B.161, 504B.221 and Order 20-14. Thus, the State has established that it is likely to succeed on the merits of its claims.

## CONCLUSION

For all of the above reasons, the State respectfully requests that the Court grant its *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction and award the State the entirety of the relief it seeks, as detailed in its accompanying proposed order.

Dated: April 16, 2020

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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 (2019).

/s/ Michael Goodwin  
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MICHAEL GOODWIN