

STATE OF MINNESOTA
COUNTY OF MILLE LACS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

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

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Neighbors Two, Inc. d/b/a Neighbors on the Rum
aka Neighbors Eatery & Saloon on the Rum,

Defendant.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against Neighbors Two, Inc. d/b/a Neighbors on the Rum aka Neighbors Eatery & Saloon on the Rum (hereinafter, "Neighbors"), 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 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 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 prohibits restaurants and bars from offering on-premises consumption of food and 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. On December 16, 2020, Governor Walz issued Executive Order 20-103, which, beginning at 11:59 p.m. on December 18, 2020, 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.

3. Despite Executive Order 20-99's express restrictions, which have the full force and effect of law, Neighbors, a restaurant, has provided on-premises consumption of food and beverages, has allowed the public to enter the establishment beyond the restrictions of Executive Order 20-99, and has threatened to continue violating the Order.

4. Emergency Executive Order 20-99's prohibitions on on-premises dining and restrictions on restaurant and bar occupancy 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 poses 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 that potential harm to Minnesotans, Neighbors has refused to comply with Executive Order 20-99. Defendant promoted on the restaurant's Facebook page it would be, and, later, that it was, open and serving food and beverage for on-premises consumption. In short, Neighbors is ignoring the risks of the virus and has 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 Neighbors from extending, offering, or otherwise making available on-premises consumption at its location, and enjoining Neighbors from permitting more than five members of the public in its establishment at any given time, until at least 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.

6. Defendant Neighbors Two, Inc., is a domestic corporation with a registered office address of 590 5th Avenue in Princeton, Minnesota, 55371. Neighbors Two, Inc., does business under the assumed name of Neighbors on the Rum, the principal place of business of which is 509 5th Avenue in Princeton, Minnesota, 55371. Tama Holtz is the Chief Executive Officer of Neighbors Two, Inc.

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 Mille Lacs County is proper under Minnesota Statutes section 542.09 because the cause of action arose in Mille Lacs 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 December 16, 2020, COVID-19 has already caused at least 4,455 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

12. 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.

13. From October 4 to November 14, the 14-day COVID-19 case rate in Mille Lacs County more than tripled.

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>

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. 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.

15. 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 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 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

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/>.

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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 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 Mille Lacs County.

22. 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.

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.

23. 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 prohibited, as is any occupancy above five members of the public waiting for their orders, until at least December 18, 2020 at 11:59 p.m. Executive Order 20-99 has been extended to January 10, 2021 at 11:59 p.m. by Executive Order 20-103, which permits restaurants to provide outdoor, on-premises consumption services starting on December 18, 2020 at 11:59 p.m.

24. 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. 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. NEIGHBORS VIOLATED AND THREATENED TO CONTINUE TO VIOLATE EXECUTIVE ORDER 20-99.

25. Defendant Neighbors, a restaurant, has flagrantly violated Executive Order 20-99.

26. On Wednesday, December 16, 2020, Neighbors advertised on its public Facebook page that it would be “[o]pen at 11am today for full service!” Later that day, Neighbors posted, “[w]e are open for dine in, take out and curbside.”

27. When a Princeton Police Department officer went to Neighbors with two employees from the Minnesota Department of Health, the officer noted that there were “40-50 individuals inside” that were “seated at the bar and at tables.” Minnesota Department of Health employees noted that those individuals were eating and drinking inside the restaurant. When the Princeton Police informed Neighbors that continuing to operate as they were would violate Executive Order 20-99, a Neighbors representative indicated that Neighbors would continue to open for on-premises consumption.

28. When an AGO Investigator called Neighbors’ publicly-listed phone number, an employee of the restaurant informed the investigator that Neighbors was presently serving food and beverages for on-premises dining.

29. 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 brings this action to enjoin and remediate Neighbors' 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>).

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 they offer 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 their food or beverage orders.

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

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 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 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
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/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