

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

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

In the Matter of Biltwell Restaurant, LLC and  
related companies

**ASSURANCE OF  
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance ("Assurance") is entered into pursuant to Minn. Stat. § 8.31, subd. 2b, between the State of Minnesota, by and through its Attorney General, Keith Ellison ("Attorney General"), and companies owned or managed by Kim Bartmann, including Biltwell Restaurant, LLC, Mr. Susie, LLC d/b/a Barbette, Tiny Diner, LLC d/b/a Tiny Diner, Miss Jimmy, Inc. d/b/a Red Stag Supperclub, Uncle Pearle, LLC d/b/a Pat's Tap, Out of the Blue Ventures, LLC d/b/a Book Club, Ventnor Partners, LLC d/b/a Gigi's Café, Bread & Pickle, LLC d/b/a Bread & Pickle (collectively "Bartmann Companies");

WHEREAS, pursuant to Minnesota Statutes sections 177.45 and 181.1721, the Attorney General has authority to enforce Minnesota's laws relating to employment, including, but not limited to, Minnesota Statutes chapters 177 and 181 under Minnesota Statutes section 8.31;

WHEREAS, the Bartmann Companies did not pay employees all overtime wages owed and did not pay employees all wages earned at the time they were due;

WHEREAS, the Attorney General and the Bartmann Companies (collectively, the "Parties") desire to resolve fully this matter by this Assurance;

WHEREAS, the Bartmann Companies neither admit nor deny the Attorney General's allegations contained herein; and

NOW THEREFORE, the Attorney General and the Bartmann Companies hereby agree to entry of an order with the following terms and conditions:

### **FACTUAL ALLEGATIONS**

1. The Attorney General alleges that the Bartmann Companies violated Minnesota law by failing to pay employees all of their earned wages at the time their wages were owed. Particularly, the Attorney General alleges that the Bartmann Companies failed to pay workers all wages owed for the pay periods immediately preceding Minneapolis Mayor Jacob Frey's order to temporarily close bars and restaurants for on-premises dining in order to curb the spread of the coronavirus during the 2020 COVID-19 pandemic.

#### **I. FAILURE TO PAY WAGES OWED IN A TIMELY MANNER.**

2. Following the Bartmann Companies' failure to pay employee wages, the Attorney General's Office received numerous complaints from employees. In response to those complaints the Attorney General issued a civil investigative demand ("CID") for records in March 2020 related to nonpayment of wages immediately prior to the COVID-19 shutdown order. The Attorney General confirmed via the Bartmann Companies' response that they had not paid all wages to employees for some periods immediately preceding the COVID-19 shutdown order.

3. Subsequently, the Bartmann Companies agreed to and have made all payments for previously unpaid payroll, including overtime wages, for the above-referenced pay periods in March 2020 totaling \$98,980.94.

#### **II. FAILURE TO PAY OVERTIME WAGES OWED.**

4. The Attorney General also alleges that the Bartmann Companies violated Minnesota law by sharing workers between them without paying overtime wages as required by

law. In the process of interviewing employees relating to their nonpayment of wages, the Attorney General discovered that employees worked for multiple Bartmann Companies at once and that their cumulative hours sometimes exceeded 40 hours per week. As a result, the Attorney General issued an additional CID to the Bartmann Companies in April 2020 relating to the Bartmann Companies nonpayment of overtime wages to its employees.

5. In response to the Attorney General's CID, the Bartmann Companies represented, through counsel, that it had audited its records and paid employees the overtime back wages they were owed. Particularly, the Bartmann Companies have issued paychecks to employees for overtime back wages owed for 2018, 2019, 2020 in the amount of \$66,105.92. The Bartmann Companies subsequently provided the Attorney General with the documentation needed to verify that the overtime back wages were accurately calculated.

#### **INJUNCTIVE RELIEF**

6. Bartmann Companies, including their principals, officers, directors, employees, agents, servants, independent contractors, affiliates, subsidiaries, successors, and those in active concert or participation with them who receive actual notice of this Order, are hereby permanently enjoined and restrained from the following:

- a. Failing to pay employees all owed wages promptly—including overtime wages—pursuant to Minn. Stat. §§ 181.101, .13-.14.
- b. Sharing employees who are eligible for overtime wages between one or more of the Bartmann Companies without paying such employees overtime wages

for cumulative hours worked between the two companies that is over 40 hours in accordance with applicable state and federal law.<sup>1</sup>

7. Bartmann Companies shall develop written policies on the Bartmann Companies' obligation to pay overtime when employees perform work exceeding 40 hours for multiple Bartmann Companies in the same workweek, and the Bartmann Companies' "joint employer" requirements. Bartmann Companies will have this written policy in place within 30 days of the execution of this AOD by the parties. The Bartmann Companies agree to provide this policy to the Attorney General promptly upon request. The Bartmann Companies agree to provide notice to the Attorney General before it changes the policy. Such notification will include: (a) a copy of the active policy; (b) a copy of the changed policy; (c) the date which the new policy will be put into place.

8. The Bartmann Companies shall fulfill the terms of this Assurance of Discontinuance, and all of their parents, subsidiaries, and successors, shall be bound by this Assurance as if they had signed it, so as to accomplish the full relief contemplated by this Assurance. The Bartmann Companies shall not affect any change in its form of doing business, organizational identity, organizational structure, affiliations, ownership, or management composition as a method or means of attempting to avoid the requirements of this Assurance.

9. There shall be no retaliation or discrimination against any current or former employee because of the filing of a complaint with the Attorney General or other government agency, giving testimony or assistance to the Attorney General or other government agency, or

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<sup>1</sup> If the Bartmann Companies employs any employees who are exempt from federal but not state overtime requirements, 48 hours is the cumulative applicable hours over which overtime must be paid.

participation in any manner in any investigation or proceeding by the Attorney General or other government agency.

### **MONETARY PAYMENT**

10. The Bartmann Companies shall pay to the Attorney General the sum of \$66,105.92 (the "Settlement Sum") pursuant to Minn. Stat. § 8.31. All or any portion of the Settlement Sum may be distributed to employees as liquidated damages and/or restitution by the Attorney General in his discretion pursuant to Minn. Stat. §§ 8.31, 177.27, 177.45, and 181.1721. Any remaining funds shall be remitted to the Treasury of the State of Minnesota pursuant to Minn. Stat. §§ 8.31 and 16A.151.

11. **Timing and Method of Settlement Sum Payments.** The Bartmann Companies shall pay the Settlement Sum in twelve (12) equal monthly installments. The Attorney General will receive the installments no later than the first day of each month, beginning with the first day of the month following the execution and filing of this Assurance of Discontinuance. Each installment payment shall be made payable to the State of Minnesota and sent by check to Assistant Attorney General Jonathan Moler, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101.

12. **Uncollected back wages.** In addition to the Settlement Sum referenced above in paragraph 10, with respect to any and all paychecks that the Bartmann Companies has already issued to employees that have not been cashed, deposited, or otherwise redeemed by such employees relating to (1) overtime back wages owed for 2018, 2019, 2020 in the amount of \$66,105.92 or (2) for unpaid wages linked to the COVID-19 shutdown referenced in paragraphs 2-3 in the amount of \$98,980.94 (the "Uncollected Back Wages"), , the Bartmann Companies shall:

- a. Within ten (10) days after the Court's entry of this Assurance of Discontinuance, cancel the outstanding paychecks and provide an accounting to the Attorney General of the cancelled paychecks, including but not limited to identifying the name, address, telephone number, email address, and unredeemed check amount for each employee that did not cash, deposit, or otherwise redeemed such paychecks. The accounting shall include a declaration that the Bartmann Companies has already taken the appropriate taxes and withholdings from the paychecks and remitted them to the appropriate government entity; and
- b. Pursuant to Minn. Stat. § 8.31, pay to the Attorney General the sum of all paychecks it cancelled pursuant to paragraph 12(a) of this Assurance of Discontinuance. All or any portion of the amount paid under this paragraph may be distributed to employees by the Attorney General in his discretion pursuant to Minn. Stat. §§ 8.31, 177.45, and 181.1721. Any remaining funds shall be remitted to the Treasury of the State of Minnesota pursuant to Minn. Stat. §§ 8.31 and 16A.151.
- c. Within ten (10) days after the Court's entry of this Assurance of Discontinuance, the Uncollected Back Wages shall be made payable to the State of Minnesota by the Bartmann Companies and sent by wire transfer, according to instructions provided by the Attorney General's Office.

13. **Employee Contact Information.** Within thirty (30) days of execution of this Assurance of Discontinuance, the Bartmann Companies shall provide the Attorney General with the most current contact information for the Bartmann Companies employees entitled to back

wages, liquidated damages, and/or restitution under the terms of this Assurance of Discontinuance. This contact information shall include phone number, email, mailing address, the employee's status as a current or former employee, and for former employees the last four digits of the former employee's Social Security Number. The Bartmann Companies shall provide this information in Excel Spreadsheet format using the template provided to it by the AGO.

14. **Tax Documents.** For all current employees receiving back wages pursuant to paragraph 12, the Bartmann Companies shall include those back wages in the Form W-2 tax documents it prepares for employees for the year 2021, to the extent the Bartmann Companies have not already done so. The Bartmann Companies shall additionally prepare Form W-2s for each former employee receiving back wages. The Bartmann Companies shall additionally prepare 1099-MISC forms for all current and former employees receiving liquidated damages. The Bartmann Companies shall provide these tax documents to all current employees and will provide these tax documents to former employees upon request.

#### **STAYED CIVIL PENALTY**

15. Bartmann Companies shall pay a stayed civil penalty of \$100,000 to the Attorney General upon application to the Court and a showing by the Attorney General that the Bartmann Companies have materially violated any of the terms of this Assurance. The Court shall decide whether the civil penalty shall be imposed, upon a motion by the Attorney General, and after an evidentiary hearing, if the Court deems such hearing necessary. The release in paragraph 17 does not prevent the Attorney General from moving for, or collecting, the stayed civil penalty described in this paragraph. This paragraph shall be effective for eight years from the date of the Court's approval of this Assurance of Discontinuance.

## **GENERAL TERMS**

16. Nothing in this Assurance shall relieve the Bartmann Companies of their obligations to comply with all applicable Minnesota and federal laws and regulations.

17. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the Attorney General, by execution of this Assurance, hereby fully and completely releases the Bartmann Companies of any and all claims of the Attorney General under Minn. Stat. §§ 177.25, 181.101., .13-.14 connected with or arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The Attorney General through this Assurance does not settle, release, or resolve any claim against the Bartmann Companies or any other person or entity involving any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. § 8.31, 177.27, or 181.171. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

18. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

19. The person signing this Assurance for the Bartmann Companies warrants that she is authorized to execute this Assurance and does so in an official capacity that binds the Bartmann Companies and their successors and assignees.

20. This Assurance constitutes the full and complete terms of the agreement entered into by the Bartmann Companies and the Attorney General.



21. Each of the parties is represented by counsel, participated in the drafting of this Assurance, and agrees that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

22. The facts alleged in this Assurance will be taken as true, without further proof, in any subsequent litigation by or on behalf of the Attorney General to enforce its rights to any payment or monetary judgment pursuant to this Assurance, such as a nondischargeability complaint in any bankruptcy case.

23. The facts alleged in this Assurance establish all elements necessary to sustain an action by the Attorney General pursuant to section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Assurance will have collateral estoppel effect for such purposes.

24. The Bartmann Companies agree that the Stayed Civil Penalty in Paragraph 15 of this Assurance, if imposed by any court, represents a civil penalty owed to the State of Minnesota, is not compensation for actual pecuniary loss, and therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. 523(a)(7).

25. The Bartmann Companies understand that if a Court of competent jurisdiction holds that the Bartmann Companies have committed a violation of this Assurance, that such violation may subject the Bartmann Companies to sanctions for contempt pursuant to Minn. Stat. § 8.31, subd. 2b, and that the Attorney General may thereafter, in his sole discretion, initiate legal proceedings against the Bartmann Companies for any and all violations of this Assurance.

26. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any rights or any future rights.

27. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance.

28. Nothing in this Assurance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

29. The Bartmann Companies shall not state or imply, directly or indirectly, that the State of Minnesota or the Attorney General have approved of, condoned, or agree with any conduct or actions by the Bartmann Companies.

30. The Bartmann Companies agree that, in accordance with Minn. Stat. § 8.31, subd. 2b, the Attorney General, without further notice to the Bartmann Companies, may file this Assurance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the Order below without further proceedings.

31. The Parties agree that this Assurance, including any issues related to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

32. The Ramsey County District Court shall have jurisdiction of this matter for purposes of enforcing this Assurance.

33. Service of notices required by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

Jon Moler, Assistant Attorney General  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101

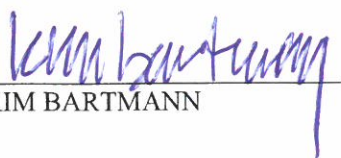
Kim Bartmann  
1600 West Lake  
Minneapolis, MN 55408

Dated: 8/5/21

THE BARTMANN COMPANIES

Dated: 8/5/21

KEITH ELLISON  
Attorney General  
State of Minnesota

  
KIM BARTMANN

/s/ Jonathan Moler

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JONATHAN D. MOLER  
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(651) 757-1330  
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*Attorney for State of Minnesota*

**ORDER**

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF DISTRICT COURT

THERE BEING NO CAUSE FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.