

STATE OF MINNESOTA **Filed in District Court**  
COUNTY OF POLK **State of Minnesota**

DISTRICT COURT  
NINTH JUDICIAL DISTRICT

Sullivan, Jennifer  
Oct 1 2021 12:12 PM

Case Type: Civil

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

Court File No. 60-CV-20-2039

Plaintiff,

vs.

**CONSENT JUDGMENT**

Boardwalk Bar and Grill, LLC,

Defendant.

WHEREAS, on March 13, 2020, as a result of the ongoing COVID-19 pandemic, Minnesota Governor Tim Walz declared a peacetime emergency. 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”;

WHEREAS, in relevant part, Emergency Executive Order 20-99 temporarily prohibited restaurants and bars from offering indoor on-premises consumption of food or 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;

WHEREAS, Plaintiff, State of Minnesota, by its Attorney General Keith Ellison (“the State” or “Attorney General”), filed a Complaint against Boardwalk Bar and Grill, LLC (hereinafter “Defendant” or “Boardwalk”) on December 11, 2020, alleging Boardwalk was providing indoor, on-premises consumption of food and beverages to the public in violation of Emergency Executive Order 20-99;

WHEREAS, on December 11, 2020, the Court issued a Temporary Restraining Order requiring Boardwalk to fully comply with Emergency Executive Order 20-99 and any future Executive Orders issued by the Governor, approved by the Executive Council, and filed in the Office of the Secretary of State in accordance with Minnesota Statutes Chapter 12 that apply to restaurants and/or bars;

WHEREAS, on December 22, 2020, the Court issued an order converting its temporary restraining order to a temporary injunction that shall remain effective pending further order of the Court or a trial on the merits in the above-captioned action;

WHEREAS, on July 1, 2021, the peacetime emergency declared by Governor Walz ended;

WHEREAS, the Parties have agreed to resolve their claims raised in the above-captioned action by entering into this Consent Judgment.

NOW, THEREFORE, in the interest of resolving the claims raised in the above-captioned action, the Parties hereby stipulate and consent to entry of this Consent Judgment and Order as set forth below:

### **REPRESENTATIONS AND WARRANTIES**

1. On August 30, 2021, Boardwalk provided the Attorney General with financial information demonstrating Defendant’s total revenue and total net profits it received for indoor on-premises consumption of food and beverages (including alcoholic beverages) from December

9, 2020, through December 13, 2020. The State has relied on the financial information produced by Defendant in its resolution of this matter.

### **MONETARY PAYMENT**

2. Boardwalk shall pay to the Attorney General the sum of \$25,000 (the “Settlement Sum”) pursuant to Minn. Stat. § 8.31 and Emergency Executive Order 20-99. The Settlement Sum shall be remitted to the general fund of the State pursuant to Minn. Stat. §§ 8.31 and 16A.151.

3. Boardwalk shall pay the Settlement sum in twelve (12) equal monthly installments. The Attorney General will receive the installment payments no later than the first day of each month, beginning with the first day of the month following the Court’s entry of this Consent Judgment and Order. Each installment payment shall be made payable to the State of Minnesota and sent by check to Assistant Attorney General Jason Pleggenkuhle, Minnesota Attorney General’s Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101. Upon Boardwalk’s payment to the Attorney General of the full Settlement Sum pursuant to the payment schedule referenced in this paragraph, the Attorney General shall file a certificate of satisfaction pursuant to Minn. Stat. § 548.15.

4. In the event a new peacetime emergency is declared during the 12 months in which Boardwalk is obligated to make installment payments as described above, and an executive order temporarily prohibits on-premises dining at bars and restaurants, Boardwalk’s obligation to remit monthly installment payments to the Attorney General pursuant to paragraph 3 shall be suspended for the period of time on-premises dining at bars and restaurants is prohibited. Boardwalk shall resume making installment payments pursuant to paragraph 3 upon the expiration of the on-premises dining prohibition for bars and restaurants. The parties agree that this paragraph shall not be construed to indicate either parties’ belief that a peacetime emergency will or will not be

declared. Nothing in this paragraph modifies Boardwalk's obligation pursuant to paragraphs 2 and 3 of this Consent Judgment to pay the Attorney General a total of \$25,000 in 12 installment payments.

5. The Parties have executed a Confession of Judgment as part of the resolution of this matter, which will not be filed unless Boardwalk does not comply with the payment schedule specified in Paragraph 3 and fails to cure the violation within 10 days in accordance with paragraph 1 of the Confession of Judgment. If an uncured violation of the payment schedule occurs, Boardwalk consents and authorizes the AGO to, *ex parte*, immediately file with the Court the Confession of Judgment that Boardwalk has executed in relation to this Consent Judgment and Order pursuant to Minn. Stat. § 548.22, thereby rendering Boardwalk immediately liable for the entire Settlement Sum, minus any amounts already paid by Boardwalk pursuant to this Consent Judgment and Order. Boardwalk consents to the Court Administrator or Clerk of Court entering the Confession of Judgment forthwith without any additional notice or other action.

#### **GENERAL TERMS**

6. Nothing in this Consent Judgment shall relieve Boardwalk of its obligation to comply with all applicable Minnesota and federal laws and regulations.

7. In consideration of the stipulated relief and contingent upon the Court's entry of this Consent Judgment and Order, the Attorney General and Boardwalk, by execution of this Consent Judgment, hereby fully and completely release the other party of any and all claims raised or which could have been raised by the Parties connected with or arising out of the allegations in the above-captioned action, up to and including the date of this Consent Judgment and Order, including claims that relate to the conduct of the Attorney General and Boardwalk. The Attorney General through this Consent Judgment does not settle, release, or resolve any claim against

Boardwalk 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. This release does not apply in any way apply to claims of any other Minnesota state agency, department, official, or division, including but not limited to the Minnesota Department of Health or the Minnesota Department of Public Safety.

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

9. The person signing this Consent Judgment for Boardwalk warrants that they are an owner of Boardwalk Bar and Grill, LLC, doing business as Boardwalk Bar and Grill, and they execute this Consent Judgment in an official capacity that binds the company and its successors.

10. This Consent Judgment constitutes the full and complete terms of the agreement entered into by Boardwalk and the Attorney General.

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

12. The Polk County District Court shall retain jurisdiction of this matter for purposes of enforcing this Consent Judgment and Order. The Attorney General may make such application as appropriate to enforce or interpret the provisions of this Consent Judgment and Order or, in the alternative, maintain any action within his legal authority for such other and further relief as he determines is proper and necessary for the enforcement of this Order. The Parties agree that, in any action brought by the Attorney General to enforce the terms of this Consent Judgment and Order, the Court shall have the authority to award equitable relief, including specific performance.

13. The failure of a party to exercise any rights under this Consent Judgment and Order shall not be deemed to be a waiver of any right or any future rights.

14. Nothing in this Consent Judgment and Order shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

15. Boardwalk agrees that a portion of the Settlement Sum, in the amount of \$10,000, 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).

16. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Consent Judgment and Order.

17. Boardwalk shall notify its officers, agents, employees, attorneys, and any other person in active concert with Boardwalk's restaurant activities of the obligations, duties, and responsibilities imposed on them by this Consent Judgment and Order.

18. Boardwalk 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 Boardwalk.

19. Service of notices required by this Consent Judgment and Order shall be served on the following persons, or any person subsequently designated by the Parties to receive such notices:

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


Jane Moss  
Manager, Boardwalk Bar and Grill, LLC  
415 2nd Street NW

East Grand Forks, MN 56721

20. The Parties consent to entry of the foregoing judgment, which shall constitute a final judgment. The judgment shall take effect immediately upon entry by the clerk of this Court.

KEITH ELLISON  
Attorney General  
State of Minnesota

Date: 09/27/2021

By:   
\_\_\_\_\_  
JASON PLEGGENKUHLE  
Assistant Attorney General  
Atty. Reg. No. 0391772

Date: 9/23/21

By:   
\_\_\_\_\_  
JANE MOSS  
Owner and Manager  
Boardwalk Bar and Grill, LLC

**ORDER**

Based upon the foregoing Consent Judgment, it is SO ORDERED.

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



Rasmusson, Anne

Oct 1 2021 9:50 AM

JUDGE OF DISTRICT COURT

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

I hereby certify that the foregoing order  
constitutes the Judgment of the Court.  
Kathy Narlock, Court Administrator

Sullivan, Jennifer  
Oct 1 2021 12:19 PM