

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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

Court File No. _____

Plaintiff,

COMPLAINT

vs.

David Nelson, Jr. d/b/a The Hookah Hideout,

Defendant.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against Defendant David Nelson, Jr. d/b/a The Hookah Hideout (hereinafter, “Hookah Hideout”) 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 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 Emergency 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 temporarily prohibits tobacco product shops and hookah bars from offering on-premises consumption of tobacco products, food, or beverages to the public, but permitting retail operations with restrictions (e.g., no product demonstrations). On December 16, 2020, noting falling infection rates but consistently high daily case counts, Governor Walz issued Executive Order 20-103, which, beginning at 11:59 p.m. on December 18, 2020, extended the tobacco product shop and hookah bar restrictions of Executive Order 20-99 to January 10, 2021, but modified the restrictions to allow for outdoor service of on-premises consumption of tobacco products pursuant to certain safety precautions.

3. Despite Executive Order 20-99's express restrictions, which have the full force and effect of law, Hookah Hideout has provided indoor on-premises consumption of tobacco products and beverages at its Little Canada establishment and allowed the public to enter its establishment beyond the restrictions of Executive Order 20-99 and has threatened to continue violating that Order and "Executive Order 20-99, as extended and modified by Executive Order 20-103 (collectively, hereinafter 'Modified Executive Order 20-99')".

4. Executive Order 20-99 and Modified Executive Order 20-99's prohibitions on indoor on-premises consumption of tobacco products and restrictions on hookah 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 of tobacco products at tobacco product shops and hookah bars pose a particularly high risk of COVID-19 transmission because such establishments allows people to gather and congregate around others from different households to smoke tobacco products without face coverings (sometimes sharing the same hookah), often for extended periods of interactions. Despite the public health harm this poses to Minnesotans, Hookah Hideout has refused to comply with Executive Order 20-99 and Modified

Executive Order 20-99. Throughout December 2020 and through the date of this Complaint, Hookah Hideout has remained open to the public for on-premises consumption of hookah tobacco products and beverages. Indeed, after the Ramsey County Sheriff's Office contacted Hookah Hideout's owner on December 29, 2020 and informed him that on-premises consumption of tobacco products was prohibited through January 10, 2021, Hookah Hideout stated it was aware of these temporary restrictions but would not comply with them and would continue to allow indoor, on-premises consumption of tobacco products at Hookah Hideout. Subsequently, the Attorney General's Office sent Hookah Hideout a letter on December 30, 2020, seeking to gain its voluntary compliance with Modified Executive Order 20-99, Hookah Hideout responded by posting on its Facebook page: "The AG is trying to come after us but we will not relent."

5. The Attorney General's Office also engaged in discussions with Hookah Hideout's attorney, who indicated that Hookah Hideout would comply with Modified Executive Order 20-99 moving forward. Nevertheless, Hookah Hideout subsequently opened to the public for indoor on-premises consumption of tobacco products.

6. In short, Defendant is ignoring the risks of the virus and has disregarded the prohibitions established by Emergency Executive Order 20-99 and Modified 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 Modified Executive Order 20-99.

PARTIES

7. 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 Emergency Executive Order 20-99, and Modified Emergency

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 Emergency Executive Order 20-99 and Modified Emergency Executive Order 20-99.

8. Defendant David Nelson, Jr. resides at 1647 Ames Ave, St. Paul, MN 55117 and is the owner, operator, and sole proprietor of The Hookah Hideout, a tobacco products shop and/or hookah bar located at 3 Little Canada Road East, Little Canada, Minnesota 55117. The Hookah Hideout is an assumed name business of which the sole nameholder is David Nelson, Jr.

JURISDICTION AND VENUE

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

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

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

12. 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.

13. COVID-19 kills people. In Minnesota alone, as of January 6, 2021, COVID-19 has already been attributed to at least 5,528 deaths. 427,587 positive cases have been reported across the state with 28,913 of those positive cases reported in the first week of December alone.²

14. If given a chance to spread, COVID-19 rapidly multiplies in communities. 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.

15. In the months of November and December of 2020, Minnesota experienced record numbers of daily new cases, hospitalizations, intensive care unit admissions, and deaths. Surging COVID-19 cases pushed Minnesota's hospital system to a critical point.³ Due to unprecedented staffing shortages, many hospitals diverted patients to other facilities and making difficult choices, like discharging patients that normally would have longer hospital stays.

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 January 6, 2021*, MINN. DEPT. OF HEALTH, <https://www.health.state.mn.us/diseases/coronavirus/situation.html>.

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/>.

16. In Ramsey County, at least 708 deaths have been attributed to COVID-19 and 38,193 individuals have tested positive. Only Hennepin County has experienced more deaths and positive cases in the State. This is the deadly backdrop against which the Defendant has defied an order intended to stem community spread of a virus and unlawfully remained open to the public for on-premises consumption tobacco products and beverages.

17. COVID-19 can easily be spread through respiratory droplets exhaled into the air by individuals not wearing face coverings. As a result, the on-premises consumption of tobacco products and beverages at tobacco product shops and hookah bars in Minnesota poses substantial risks to public health and safety. These establishments pose a particularly high risk of COVID-19 transmission because they allow people to gather and congregate around people from different households while smoking tobacco products (including exhaling smoke into the air) and drinking without face coverings, often for extended periods of interaction. Individuals cannot remain masked while they are smoking or drinking, and many people leave their masks off in hookah bars while talking. Smoking inherently involves excessive inhalation and exhalation, leading to a larger volume of respiratory droplets in the air as people smoke. Moreover, the communal nature of hookah bars and gathering with close friends or family can lower inhibitions and interfere with effective social distancing. All of these factors make tobacco product shops and hookah bars high risk for the easy transmission of COVID-19.

18. 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 tobacco product shops and hookah bars with people from different households congregating in close proximity, without masks and exhaling smoke. 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 Ramsey County.

19. 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.

20. 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 "tobacco product shops, hookah bars, cigar bars, vaping lounges, 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," and that retail operations may continue with restrictions provided in guidance documents, including a restriction that retail establishments not provide product demonstrations. All on-premises consumption of tobacco products and beverages was temporarily prohibited until December 18, 2020 at 11:59 p.m.

21. On December 16, 2020, Governor Walz issued Executive Order 20-103 which, in relevant part, extended Executive Order 20-99's provisions, including the Executive Order 20-99's prohibition on indoor, on-premises consumption of tobacco products and beverages, and its

enforcement provisions to January 10, 2021. In issuing Modified Emergency Executive Order 20-99 the order noted improvements in Minnesota's infection rate, due, in part to the restrictions of Executive Order 20-99, but Governor Walz also specifically considered the "alarming levels of community spread" of the virus. Modified Emergency Executive Order 20-99 prohibits indoor on-premises consumption of tobacco products and beverages at tobacco product shops and hookah bars like Defendant's, but permits outdoor on-premises consumption. Both orders permitted retail establishments to remain open for retail activities, with restrictions, including a prohibition on product demonstrations.

22. Executive Orders 20-99 and Modified Emergency Executive Order 20-99 were promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), were approved by the Executive Council, and filed in the Office of the Secretary of State. Thus, pursuant to Minnesota Statutes section 12.32, Executive Orders 20-99 and Modified Emergency Executive Order 20-99 have "the full force and effect of law" during the peacetime emergency. Moreover, Executive Order 20-99, which was extended by Modified Emergency 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. HOOKAH HIDEOUT VIOLATED MODIFIED EXECUTIVE ORDER 20-99.

23. Throughout December 2020, through the date of this Complaint, Hookah Hideout has remained open to ingress, egress, use, and occupancy by members of the public for the indoor, on-premises consumption of tobacco products and beverages.

24. On December 29, 2020, Commander Philip Baebenroth with the Ramsey County Sheriff's Office contacted Hookah Hideout's owner, David Nelson, Jr., and informed him that

Modified Executive Order 20-99 temporary prohibited indoor, on-premises consumption of tobacco products, but that it could remain open (subject to certain COVID-19 safety precautions) for the retail sale of tobacco products.

25. In response, Mr. Nelson stated he fully understood the temporary restrictions required by Modified Executive Order 20-99, but stated Hookah Hideout would not abide by them. Instead, Mr. Nelson stated that Hookah Hideout would continue to open to the public for indoor, on-premises consumption of tobacco products, including later that night on December 29, 2020.

26. Subsequently, on December 30, 2020, the Attorney General's Office sent Hookah Hideout a letter again informing it of the temporary restrictions applicable to Hookah Hideout and asking it to confirm by 5:00 p.m. that same day that it would comply with the requirements of Modified Executive Order 20-99.

27. Thereafter, Hookah Hideout posted this letter to its public Facebook page along with its apparent response, which stated: "The AG is trying to come after us but we will not relent."

28. On January 4, 2021, Hookah Hideout, through counsel, represented in writing to the Attorney General's Office that it would comply with Modified Executive Order 20-99 moving forward. Nevertheless, an investigator from the Attorney General's Office subsequently observed unmasked individuals seated inside Hookah Hideout, smoking while failing to maintain social distancing.

29. Governor Walz's Emergency Executive Orders 20-99 and 20-103 were 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

consumption of tobacco products and beverages 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 Modified Emergency Executive Order 20-99, and brings this action to remediate Defendant Hookah Hideout'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.(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) . . . tobacco product shops, hookah bars, cigar bars, vaping lounges, 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 tobacco product shop, hookah bar, and/or vaping lounge, as those terms are used in Executive Order 20-99 paragraph 7.c.iii.A, because it offers tobacco products and beverages for on-premises consumption. Thus it was required to remain closed to ingress, egress, use, and occupancy by members of the public from November 20, 2020 at 11:59 pm at through December 18, 2020 at 11:59 pm for on-premises consumption, except that Defendant could permit up to five members of the public at one time for the purpose of picking up to-go orders.

5. On and after November 21, 2020, Defendant provided on-premises consumption of tobacco products or beverages to the public.

6. Defendant’s conduct, practices, and actions described in this Complaint constitute multiple, separate violations of Executive Order 20-99.

COUNT II
VIOLATION OF EMERGENCY EXECUTIVE ORDER 20-99, AS EXTENDED AND
MODIFIED BY 20-103

7. Plaintiff re-alleges all prior paragraphs of this Complaint.

8. Paragraph 7.c.vi of Modified 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:

...

vi. . . . tobacco product shops, hookah bars, cigar bars, vaping lounges, and other Places of Public Accommodation offering food, beverages (including

alcoholic beverages), or tobacco products for on-premises consumption must remain closed for indoor service. . . .

9. Defendant is a “Place of Public Accommodation” as defined by Modified Executive Order 20-99 paragraph 5.f because Defendant is a business (as defined by Modified 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.

10. Defendant is a tobacco product shop, hookah bar, and/or vaping lounge as those terms are used in Modified Executive Order 20-99 paragraph 7.c.vi, because Defendant offers tobacco products or beverages for indoor on-premises consumption and thus must be closed to ingress, egress, use, and occupancy by members of the public from December 18, 2020 at 11:59 pm through January 10, 2021.

11. On and after December 18, 2020, Defendant has provided on-premises indoor consumption of tobacco products or beverages to the public.

12. Defendant’s conduct, practices, and actions described in this Complaint constitute multiple, separate violations of Modified Emergency 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 Emergency Executive Order 20-99 and Modified Emergency 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 Emergency Executive Order 20-99, as extended and modified by Executive Order 20-103, or any future Executive Orders relating to tobacco product shops, hookah bars, vaping lounges, 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 Emergency Executive Order 20-99 and Modified Emergency 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: January 7, 2021

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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/ Jason Pleggenkuhle
JASON PLEGGENKUHLE