

STATE OF MINNESOTA
COUNTY OF FREEBORN

DISTRICT COURT
THIRD JUDICIAL DISTRICT

Case Type: Civil

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

Court File No. 24-CV-20-1788

Plaintiff,

vs.

MLH Enterprises L.L.C. d/b/a The Interchange
Wine & Coffee Bistro,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND TEMPORARY RESTRAINING
ORDER**

Defendant.

The above-titled matter came before the undersigned Judge of the District Court on December 23, 2020, upon the *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction brought by the State of Minnesota, by its Attorney General Keith Ellison (“the State”), against MLH Enterprises L.L.C. d/b/a The Interchange Wine & Coffee Bistro (“Interchange”).

The Court has considered the pleading, exhibits, files, records, arguments, submissions of the State, and the affidavits the State submitted to the Court.¹ The Court accordingly makes the following findings of fact, conclusions of law, and enters the following Order:

¹ The Court considered the affidavits of Assistant Attorney General Justin Moor and Investigator Marianne Ellis at the Minnesota Attorney General’s Office, and Epidemiologist Richard Danila at the Minnesota Department of Health.

FINDINGS OF FACT

1. Defendant, Interchange, located at 211 S Broadway Ave, Albert Lea, MN 56007, is a restaurant that offers food and beverage for on-premises consumption.

2. The COVID-19 pandemic represents one of the greatest public health emergencies Minnesota has endured in recent history. The disease is dangerous and has already killed 4,719 Minnesotans. (Moor Aff. Ex. 3.) The disease is also virulent and prone to community spread, with at least 397,319 cases confirmed in Minnesota since March 5, 2020. (*Id.*) The disease has picked up its pace in recent months, setting records in numbers of new infections. (*Id.*) The Minnesota Department of Health notes that preventing people from coming in close contact with one another indoors, such as dining inside a restaurant, is critical in stemming community spread of COVID-19. (Danila Aff. at ¶¶3-9.)

3. Executive Order 20-99 originally prohibited restaurants from being open to on-premises dining until December 18, 2020 at 11:59 p.m. Executive Order 20-99 was subsequently modified and extended by Executive Order 20-103, and now temporarily prohibits restaurants from being open to the public for indoor on-premises consumption of food or beverage through January 10, 2021 at 11:59 p.m., while permitting outdoor dining with restrictions. (Moor Aff., Ex. 8.)

4. Executive Order 20-99, both originally and as modified and extended by Executive Order 20-103, prohibits venues providing indoor events and entertainment from opening to the public. (Moor Aff., Ex. 8.)

5. Defendant violated Executive Order 20-99. Defendant provided on-premises consumption of food and beverage to the public on December 16, 17, and 18, 2020. (Moor Aff., Ex. 1.) Additionally, Defendant held an indoor concert on December 17, 2020, and permitted members of the public to attend. (Ellis Aff., Ex. C.)

6. Moreover, Defendant has violated Executive Order 20-99 as that Order has been modified and extended by Executive Order 20-103, and Defendant has indicated that, despite knowing the unlawfulness of its actions, Defendant will continue to violate these Emergency Executive Orders. The Minnesota Department of Health served Defendant with a cease-and-desist order on [December 18, 2020], which Defendant has ignored. (Moor Aff., Ex. 1) Indeed, Defendant opened its doors for indoor dining the very next day, December 19, 2020. (*Id.*) Defendant continues to publicly advertise that it is open for on-premises indoor dining. (*Id.*)

7. The Attorney General's Office now asks this Court to grant a Temporary Restraining Order and Temporary Injunction to enjoin Defendant from providing indoor on-premises consumption of food and beverages to the public, and from permitting more than five members of the public in Defendant's restaurant at one time, in violation of Executive Order 20-99 as modified and extended by Executive Order 20-103.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case and the parties hereto and makes the following Conclusions of Law.

2. On November 18, 2020, Governor Tim Walz issued Emergency Executive Order 20-99, which placed restrictions on certain Places of Public Accommodation, including temporarily closing restaurants and bars to on-premises consumption through Friday, December 18, 2020 at 11:59 pm. Emergency Executive Order 20-99 also prohibited venues providing indoor events and entertainment from opening to the public through the same time period. On December 16, 2020, Governor Walz issued Emergency Executive Order 20-103, extending and modifying Executive Order 20-99. Executive Order 20-103's modifications to Executive Order 20-99 extended the prohibition on indoor venues and indoor on-premises dining to January 10, 2021, but

allowed restaurants to resume serving outdoor on-premises dining. Executive Orders 20-99 and 20-103 were promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), 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 as modified and extended by Executive Order 20-103 has “the full force and effect of law” during the peacetime emergency.

3. Executive Order 20-99 as modified and extended by Executive Order 20-103 authorizes the Attorney General to enforce its provisions and seek any relief available pursuant to Minnesota Statutes section 8.31, including “injunctive relief, civil penalties in an amount to be determined by the court, up to \$25,000 per occurrence, costs of investigation and reasonable attorney’s fees and costs, and other equitable relief as determined by the court” Among other relief, Minnesota Statutes section 8.31, subdivision 3 provides in pertinent part:

On becoming satisfied that any of those laws has been or is being violated, or is about to be violated, the attorney general shall be entitled, on behalf of the state; (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation

Minn. Stat. § 8.31, subd. 3.

THE STATE IS ENTITLED TO A TEMPORARY RESTRAINING ORDER PURSUANT TO MINNESOTA RULE OF CIVIL PROCEDURE 65.01.

4. The State has filed an emergency consumer-protection action to enforce Governor Walz’s Emergency Executive Order 20-99 as modified and extended by Executive Order 20-103 (collectively, hereinafter “Modified Executive Order 20-99”), which places restrictions on certain Places of Public Accommodation, including temporarily prohibiting bars and restaurants from opening to the public for indoor on-premises consumption through Sunday, January 10, 2021 at 11:59 pm. The express purpose of the Order is to slow the spread of the COVID-19 virus in order to protect public health and safety. The State has also moved the Court for a temporary restraining

order (“TRO”) pursuant to Minn. R. Civ. P. 65.01. Requests for TROs and temporary injunctions are generally evaluated under the same standards. *Compare Minneapolis Urban League, Inc. v. City of Minneapolis*, 650 F. Supp. 303, 303 (D. Minn. 1986) (Reviewing TRO request), with *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *rev’w denied* (Minn. Feb. 4, 2002) (reviewing temporary injunction request).

5. The State seeks temporary injunctive relief as authorized by statute pursuant to section 8.31 as well as Modified Executive Order 20-99; accordingly there is no need to make findings on the *Dahlberg* factors and instead the Court can grant temporary injunctive relief upon a showing that Defendants “violated or were about to violate the statutes involved” and that “injunctive relief would fulfill the legislative purpose of the statutes.” *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. App. 1992)); *accord State v. Minn. School of Business, Inc.*, 899 N.W.2d 467, 471-72 (Minn. 2017).

6. There is good cause to believe that the State will prevail on the merits of its claims that Defendant is violating and about to further violate Modified Executive Order 20-99. The State has submitted evidence showing that Defendant Interchange, a Minnesota restaurant, is offering indoor on-premises consumption of food and beverages and allowing more than five members of the public to enter its restaurant at one time. (Moor Aff. Ex. 1; Ellis Aff. Ex. A-E.) Those actions clearly violate, or threaten to violate, Modified Executive Order 20-99. Accordingly, the State is likely to prevail on the merits that Defendant has violated and is about to violate Executive Order 20-99. Exec. Order 20-103, ¶ 7.c. vi. (“Restaurants ... and other Places of Public Accommodation offering food, beverages (including alcoholic beverages), or tobacco products for on-premises

consumption must remain closed to for indoor service, but may provide outdoor service if they adhere to the applicable guidance...”)

7. There is good cause to believe that the temporary injunctive relief the State seeks would fulfill the purposes of Modified Executive Order 20-99. The purpose of Modified Executive Order 20-99 is to slow the spread of the COVID-19 virus in order to protect public health and safety. Modified Executive Order 20-99 promotes public health and safety by restricting avenues of viral transmission at locations where such transmission is likely to occur, like at restaurants and bars. The temporary injunctive relief ordered by the Court will help protect the public’s health and safety as well as the health and safety of Defendants’ patrons by temporarily closing Interchange for indoor on-premises dining in accordance with Modified Executive Order 20-99 and requiring Defendant to comply with the safety requirements in Modified Executive Order 20-99 and any future Executive Orders pertaining to bars or restaurants. It also protects this Court’s ability to grant full and effective relief among the parties.

8. Although the Court need not address the *Dahlberg* factors, the Court finds that the five-factor *Dahlberg* test weighs in favor of granting the State’s sought temporary restraining order. Under the *Dahlberg* test, the Court considers: (1) the relationship between the parties; (2) the relative harm to the parties if injunctive relief is granted or denied; (3) the moving party’s likelihood of success on the merits; (4) any public interest or public policy involved; and (5) the administrative burdens involved in judicial supervision and enforcement. *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

9. The first *Dahlberg* factor—“the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief”—weighs heavily in favor of the State. *Dahlberg Bros.*, 137 N.W.2d at 321. Executive Order 20-99 empowers the Attorney

General's Office to take action against Places of Public Accommodation that are operating in violation of the Order. As the chief legal officer for the State of Minnesota, the Attorney General has authority to file a civil enforcement action seeking injunctive relief (among other remedies) to secure compliance with Modified Executive Order 20-99. *See* Minn. Stat. § 8.31, subds. 3, 3a; Executive Order 20-99 at ¶ 11. Defendant is violating and has threatened to violate the Order, including but not limited to remaining open to the public for indoor on-premises dining on or after November 21, 2020. Because the background and relationship of the parties is that of regulator and non-compliant regulated entity, the first *Dahlberg* factor heavily favors granting the State's requested relief. *Accord State ex rel. Swanson v. CashCall, Inc.*, Nos. A13-2086, A14-0028, 2014 WL 4056028, *5 (Minn. App. Aug. 18, 2014), *review denied* (Minn. Nov. 17, 2015). Moreover, Defendant appears to have complied with Executive Order 20-99 between November 20, 2020 through December 15, 2020, and granting injunctive relief would preserve the status quo. That preservation further weighs in favor of granting the injunctive relief requested.

10. The second *Dahlberg* factor requires the Court to balance the harms to be suffered if the temporary injunction is granted with the harms to be suffered if it is denied. *Dahlberg Bros.*, 137 N.W.2d at 321; *see also Indep. Sch. Dist. No. 35, Marshall County v. Engelstad*, 144 N.W.2d 245, 248 (Minn. 1966) ("There must be threatened injury which is real, substantial, and irreparable."); *Cramond v. Am. Fed. of Labor & Congress of Indus. Organizations*, 126 N.W.2d 252, 256 (Minn. 1964) (recognizing irreparable injury may occur where the actions of an adverse party may render the relief sought by the other party "ineffectual").

Here, Minnesotans will be threatened with real, substantial, and irreparable harms for which a future payment of money is not a "realistic remedy" if the Court does not grant the State's requested temporary injunctive relief. Minnesota is currently experiencing an alarming surge in

COVID-19 cases, including the record high daily case numbers received this month and increasing reported deaths. Defendant's conduct risks further increasing the rate of community spread in Minnesota. Modified Executive Order 20-99 was thoughtfully conceived by public health professionals to address the specific and deadly exigencies posed by the public health crisis facing our State. (*See* Danila Aff. at ¶¶7-8; Executive Order 20-103 at 1.) The Order seeks to restrict only that behavior most tied to outbreaks in Minnesota, even as infections grow dangerously higher. (*Id.*) The virus appears to spread most easily between people indoors for extended periods of time, (Danila Aff. at ¶ 9), and those situations are precisely what Defendant's conduct will foster. Compliance with the Order is critical to slowing the spread of COVID-19 and protecting the capacity of Minnesota's health system.

Payment of money is not a realistic remedy in this situation, not only for members of the public who could become infected, but for the public as a whole. Such harm also far outweighs any interest Defendant may have in temporarily not allowing indoor on-premises consumption of food or beverages. Because the public health and safety of Minnesotans are threatened by Defendant's defiant actions absent a temporary restraining order and temporary injunction, this factor weighs strongly in favor of the State.

11. The third *Dahlberg* factor requires the Court to consider whether the State is likely to succeed on the merits of its claims. The Defendants has openly publicized its noncompliance with Modified Executive Order 20-99 and admitted its intentions to continue violating these Orders to an MDH inspector. Efforts to invalidate executive orders issued during a public health crisis like the present one are evaluated under the framework of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27 (1905). Under this framework, courts give significant deference to the emergency measures instituted during a public health crisis. "The Constitution does not

compel courts to turn a blind eye to the realities of the COVID-19 crisis.” *Cassell v. Snyders*, 20 C 50153, 2020 WL 2112374, at *6 (N.D. Ill. May 3, 2020) (citing *Jacobson*, 197 U.S. at 27).²

Under *Jacobson*, state action is susceptible to constitutional challenge only if: (1) it has no real or substantial relation to the object of protecting the public health, safety, or morals; or (2) “is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.” *Jacobson*, 197 U.S. at 31. The heightened deference courts apply during public health emergencies is rooted in the fact that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Id.* at 27.

Thus, the temporary executive actions the Governor has taken in response to the COVID-19 emergency are entitled to substantial judicial deference and courts may not “second-guess the wisdom or efficacy of the measures.” *Rutledge*, 956 F.3d at 1028 (internal quotations omitted). Courts throughout the country have applied *Jacobson* in upholding a variety of executive orders to combat the COVID-19 pandemic, including measures similar to those contained in Modified Executive Order 20-99.³ Indeed, in Stearns, Wabasha, Polk, Ramsey, and Dakota Counties,

² Moreover, nothing in *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, No. 20A87, 2020 WL 6948354, 592 U.S. --- (Nov. 25, 2020) abrogates, overrules, or otherwise limits the application of *Jacobson* here. The Eighth Circuit (and numerous other federal courts) have confirmed that *Jacobson* applies to emergency orders issued to combat COVID-19. See *In re Rutledge*, 956 F.3d 1018, 1027 (8th Cir. 2020). Indeed, the *Roman Catholic* majority did not discuss *Jacobson*, much less overrule or otherwise limit its application and the constitutional issues at play in *Roman Catholic* are easily distinguishable from the case at bar. Thus, any attempted suggestion to the contrary by Defendant is wrong as a matter of law.

³ See, e.g., *Calvary Chapel Dayton Valley v. Sisolak*, No. 320-CV-00303, 2020 WL 4260438, at *2-3 (D. Nev. June 11, 2020); *Best Supplement Guide, LLC v. Newsom*, No. 220-CV-00965-JAM/CKD, 2020 WL 2615022, at *3 (E.D. Cal. May 22, 2020) (applying *Jacobson* to reject First and Fourteenth Amendment challenges to California’s executive orders closing gyms, and collecting cases); *Henry v. DeSantis*, No. 20-CV-80729, 2020 WL 2479447, at *6 (S.D. Fla. May 14, 2020) (rejecting First and Fourteenth Amendment challenges to Florida’s executive order

district courts have held that the State was likely to succeed on the merits against (1) a similarly defiant restaurant that refused to comply with the Governor’s Executive Orders early in the pandemic, (2) a defiant gym that refused to comply with Executive Order 20-99, (3) a defiant restaurant in East Grand Forks that refused to comply with Executive Order 20-99, (4) a defiant restaurant in Lynd that refused to comply with Executive Order 20-99, and (5) a defiant restaurant in Lakeville that refused to comply with Executive Order 20-99. All four courts granted the State’s motions for temporary restraining orders. (Moor Aff., Ex. 9.)

Modified Executive Order 20-99 has a clear connection to the protection of Minnesotans’ health and safety, as shown in both the clear language of the Order and in the data on where COVID-19 spreads most readily. The Order prohibits restaurants from providing indoor on-site consumption of food or beverages, and it limits restaurants to five indoor on-premises customers at any given time waiting for take-out orders. Neither requirement is “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.”⁴

closing bars and restaurants); *Friends of Danny DeVito v. Wolf*, No. 68 MM 2020, 2020 WL 1847100, at *16 (Pa. Apr. 13, 2020) (applying *Jacobson* framework in affirming constitutionality of Pennsylvania’s stay-at-home order); *Commcan, Inc, et al. v. Baker*, No. 2084CV00808-BLS2, 2020 WL 1903822, at *6 (Mass. Super. Apr. 16, 2020) (rejecting Equal Protection challenge to executive order closing legal marijuana dispensaries but leaving other businesses open); *Talleywhacker, Inc. v. Cooper*, 2020 WL 3051207 (E.D.N.C.) (denying strip club that also served alcohol and food motion for temporary and rejecting claims under the First, Fifth, and Fourteenth Amendments); *Amato v. Elicker*, 2020 WL 2542788 (D. Conn.) (denying restaurants motion for temporary injunction from bar/restaurant closure order and rejecting First Amendment claims); *McCarthy v. Cuomo*, 2020 WL 3286530 (E.D.N.Y.) (denying strip club/bar/restaurant’s motion for a temporary injunction and rejecting First and Fifth Amendment claims).

⁴ See, e.g., *Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 560 U.S. 702, 721 (2010) (“The liberties protected by substantive due process do not include economic liberties.”); see also *Henry v. DeSantis*, No. 20-CV-80729, 2020 WL 2479447, at *7 (S.D. Fla. May 14, 2020) (“Time and again, the Supreme Court has determined that there is no fundamental right to a job, or right to work”).

Defendant has explicitly acknowledged that its conduct violated Executive Order 20-99. Because the Orders have the force and effect of law, pass constitutional muster, and are being openly violated by Defendant, the third *Dahlberg* factor weighs in favor of granting the State's requested injunctive relief.

12. The fourth *Dahlberg* factor requires consideration of any public interest or public policy expressed in applicable statutes. *Dahlberg Bros.*, 137 N.W.2d at 321-22. As discussed above, the Governor issued Modified Executive Order 20-99 \ to slow the spread of a deadly infectious disease. Defendant has violated these safety restrictions by remaining open to the public for indoors on-premises consumption of food and beverage on December 16, 17, 18, and 19, 2020 and allowing more than five members of the public inside its restaurant at one time. Public policy clearly weighs in favor of temporary injunctive relief that requires Defendant to temporarily restrict its services to the public in accordance with Modified Executive Order 20-99.

13. Finally, the Court must consider the administrative burdens a temporary injunction may impose upon the Court. *Dahlberg Bros.*, 137 N.W.2d at 322. Here, issuing a temporary injunction will impose minimal administrative burdens on the Court because all the State requests is that Defendant obey the Governor's Modified Executive Order 20-99. Indeed, the State only requests that Defendant conform its conduct to that which is expected of other restaurants in Minnesota. For this reason, this final *Dahlberg* factor also fully favors granting the State's requested temporary injunctive relief.

14. Furthermore, the State has established that it is entitled to not only temporary injunctive relief but to a TRO, before Defendant can be heard in opposition, pursuant to Minn. R. Civ. P. 65.01. It is clear from the facts shown by the State that Defendant's patrons and the general

public will suffer irreparable harm unless Defendant is temporarily enjoined from opening for indoor on-premises dining in violation of Modified Executive Order 20-99.

15. No security is required of the State of Minnesota for issuance of a temporary restraining order. *See* Minn. Stat. § 574.18; *State v. Nelson*, 189 Minn. 87, 89-90 (1933).

ORDER

I. TEMPORARY RESTRAINING ORDER.

WHEREFORE, IT IS HEREBY FURTHER ORDERED THAT:

1. The State's motion for a temporary restraining order pursuant to Minnesota Rule of Civil Procedure 65.01 is **GRANTED**.

2. Effective from the date of this Order, Defendant and its officers, agents servants, employees, and other persons in active concert or participation with Defendant who receives actual notice of this Order are prevented, restrained, and enjoined from taking any action violating Executive Order 20-99 as modified and extended by Executive Order 20-103, including but not limited to offering indoor on-premises consumption of food or beverages and allowing more than five members of the public inside its restaurant at one time.

3. Defendants shall fully comply with Executive Order 20-99 as modified and extended by Executive Order 20-103 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, while those Executive Orders are effective.

II. CORRESPONDENCE AND SERVICE ON PLAINTIFF.

4. IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence and service of notices on the Plaintiff shall be addressed to:

Assistant Attorney General Justin Moor
 Minnesota Attorney General's Office
 445 Minnesota Street, Suite 1400
 St. Paul, Minnesota 55101-2130
 justin.moor@ag.state.mn.us

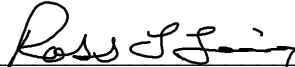
III. TEMPORARY INJUNCTION HEARING.

5. IT IS FURTHER ORDERED that, pursuant to Minn. R. Civ. P. 65.01, counsel for Plaintiff and Defendants shall appear before this Court on January 28, **2021**, at 1:30PM, [**the Freeborn County Courthouse, 411 S Broadway Ave, Albert Lea, MN 56007/ Via Teleconference**] for a hearing on Plaintiff's motion for a temporary injunction pending final ruling on the Complaint against Defendant and imposing such additional relief as may be appropriate.

6. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes and this Order shall remain in effect until further order of the Court.

12/23/2020 12:51:01 PM

Dated: 23 December 2020



 The Honorable Judge Ross L. Leuning;
 Judge of District Court Third Judicial District, Minnesota