

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: Civil (Other)

Bright Red Group, LLC (d/b/a Smack Shack), 90's Minneapolis, LLC (d/b/a The Gay 90's), P.J. Hafiz Club Management, Inc. (d/b/a Sneaky Pete's), Urban entertainment, LLC (d/b/a Wild Greg's Saloon), Urban Forage, LLC (d/b/a Urban Forage), and MikLin Enterprises, Inc. (d/b/a Jimmy John's), I & E Inc. (d/b/a Bunkers Music Bar & Grill),

Court File No. _____

COMPLAINT

Plaintiffs,

v.

City of Minneapolis and Jacob Frey, in his official capacity as Mayor of the City of Minneapolis,

Defendants.

INTRODUCTION

This is an action seeking a declaratory judgement from the Court finding that Emergency Resolution 2022-5 issued by Minneapolis Mayor Jacob Frey on January 14, 2022, restricting the rights of Plaintiffs as restaurant owners and requiring them to verify Covid-19 vaccine or testing status, was without authority, *ultra vires*, and as such should be declared null and void.

PARTIES

1. Plaintiff Bright Red Group, LLC (d/b/a Smack Shack) (hereinafter “Bright Red Group”) is a Minnesota limited liability company, with its principal executive office located at 603 Washington Ave. N, Minneapolis, Minnesota. Bright Red Group owns and operates a restaurant, Smack Shack, which is located in Minneapolis, Minnesota.

2. Plaintiff 90’s Minneapolis, LLC (d/b/a The Gay 90’s) (hereinafter “90’s Minneapolis”) is a Minnesota limited liability company, with its principal executive office located at 400 Hennepin Ave., Minneapolis, Minnesota. 90’s Minneapolis owns and operates a bar, The Gay 90’s, which is located in Minneapolis, Minnesota.

3. Plaintiff P.J. Hafiz Club Management, Inc. is a Minnesota corporation, with its registered office located at 7080 Steepleview Rd., Woodbury, Minnesota. P.J. Hafiz Club Management, Inc. does business under the name of Sneaky Pete’s (hereinafter “Sneaky Pete’s). Sneaky Pete’s owns and operates a restaurant and bar, Sneaky Pete’s Bar and Grill, which is located at 14 N. 5th Street, Minneapolis, Minnesota.

4. Plaintiff Urban entertainment, LLC (d/b/a Wild Greg’s Saloon) (hereinafter “Urban entertainment”) is a Minnesota limited liability company, with its registered office located at 3781 Labore Rd., Vadnais Heights, Minnesota. Urban entertainment owns and operates a bar, Wild Greg’s Saloon Minneapolis, which is located at 315 N. 1st Ave. N, Minneapolis, Minnesota.

5. Plaintiff Urban Forage, LLC (d/b/a Urban Forage) (hereinafter “Urban Forage”) is a Minnesota limited liability company, with its registered office located at 3016 East Lake Street, Minneapolis, Minnesota. Urban Forage owns and operates a taproom, Urban Forage Winery & Cider House, which is located at 3016 East Lake Street, Minneapolis, Minnesota.

6. Plaintiff MikLin Enterprises, Inc. (d/b/a Jimmy John’s) is a Minnesota corporation, with its registered office located at 4375 Trillium Lane W, Minneapstrista, Minnesota. MikLin Enterprises, Inc. owns and operates Jimmy John’s restaurants, at least one of which is located in Minneapolis, Minnesota.

7. Plaintiff I & E Inc. (d/b/a Bunkers Music Bar and Grill) (hereinafter “Bunkers”) is a Minnesota corporation, with its registered office located at 761 Washington Ave. N., Minneapolis, Minnesota. I & E Inc. owns and operates Bunkers Music Bar and Grill, which is located in Minneapolis, Minnesota.

8. Defendant City of Minneapolis is a municipal corporation, having adopted a home-rule charter under the Minnesota Constitution, article XII, section 4.

9. Defendant Jacob Frey is the mayor of the City of Minneapolis and is being sued in his official capacity. Mayor Frey maintains his office at City Hall, 350 S. Fifth Street, Room 331, Minneapolis, Minnesota.

10. Mayor Frey has purportedly exercised emergency relief powers reserved under Minn. Stat. § 12.29 and Minneapolis Code of Ordinances §§ 128.50-60 in response to the COVID-19 pandemic and the related public health threat that COVID-19 poses.

JURISDICTION AND VENUE

11. This action raises questions under Minnesota Statutes and the Minnesota Constitution, and thus, this Court has jurisdiction over all of Plaintiffs' claims pursuant to Minn. Stat. § 484.01, subd. 1(1), and pursuant to Minn. Const., Art. VI, § 3.

12. This Court is authorized to grant declaratory relief pursuant to Minn. Stat. § 555.01 and to grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.

13. Venue is proper in this county and this district because one or more of the named defendants presently reside in Hennepin County and because the cause of action, or some part thereof, arose in Hennepin County pursuant to Minn. Stat. § 542.03 and § 542.09.

BACKGROUND FACTS

14. On March 13, 2020, Minnesota Governor Timothy Walz issued Emergency Executive Order 20-01, declaring a peacetime emergency in response to the COVID-19 (a/k/a the "coronavirus" or "SARS-CoV-2") pandemic.

15. On March 16, 2020, Mayor Frey, declared a “local public health emergency due to Covid-19,” wherein he invoked the “emergency executive authority section of the Minneapolis Emergency Operations Plan.”

16. Minneapolis City Ordinance § 128.50 permits a mayor to declare a local emergency; however, the emergency may not be continued for a period in excess of three (3) days except by or with the consent of the city council.

17. During any such emergency, Ordinance § 128.50 grants the mayor limited powers, including the authority to impose curfew hours and require certain businesses within the City of Minneapolis, including but not limited to liquor stores, bars, and 3.2 beer taverns, to temporarily close. This ordinance does not specifically allow the mayor to restrict the operations of restaurants.

18. In circumstances where it is necessary to prepare for or manage an emergency and no adequate regulations for so doing have been adopted by the governor or the city council, then pursuant to Ordinance § 128.60 the mayor may, by proclamation, promulgate regulations consistent with applicable state or federal law or regulation in relation to emergency health regulations and all matters which are required to protect public safety, health, and welfare. This power is limited to the time during a declared emergency.

19. In the months following his initial declaration of an emergency in March 2020, Mayor Frey issued various emergency regulations imposing certain restrictions on

the operations of places of public accommodation, including Emergency Regulation 2020-17, “which imposed certain regulations and restrictions on customer service within restaurants, nightclubs, brewpubs, breweries, craft distilleries, taprooms, and other indoor spaces of entertainment.” This Emergency Regulation was rescinded on February 18, 2021.

20. In the months that followed, the number of new cases and presence of COVID-19 decreased overall across the State of Minnesota and the City of Minneapolis. In conjunction therewith, the number and scope of regulations and restrictions on businesses and places of public accommodation, including restaurants and bars, significantly decreased in the State of Minnesota.

21. On July 1, 2021, the statewide peacetime emergency was declared to have ended. In fact, at the time the statewide peacetime emergency ended, Minneapolis saw only nine new cases of COVID-19 reported.

22. Despite the State of Minnesota’s determination that no public health emergency continued to exist and the undisputed decrease in new COVID-19 cases and its diminishing presence in the City of Minneapolis, the City of Minneapolis determined to **extend** its emergency declaration “in order to provide a **planned, phased elimination of its Emergency Regulations** promulgated during the Covid-19 Local Public Health Emergency, particularly those which offer critical support to local businesses, protected

vulnerable populations, and recognized first responders and other essential workers.”

(Mpls. Resolution 2021R-177 (emphasis added).)

23. Initially, the Minneapolis City Council advised that the state of a declared emergency would continue until September 30, 2021. However, since that time, the Minneapolis City Council has continued to extend the declared emergency and has done so through the present. There is no indication from the City of Minneapolis, Minneapolis City Council, or Mayor Frey as to when the declared, and continually extended, emergency is expected to end.

City of Minneapolis Imposes Unprecedented Restrictions on Restaurants and Bars, Including Emergency Regulation 2022-5

24. While since July 2021, the COVID-19 virus has taken on new variations and presented varying concerns, the State of Minnesota has not reinstituted a statewide peacetime emergency and Governor Walz has not invoked or exercised his related emergency powers to restrict the operations of restaurants and bars in the state.

25. The City of Minneapolis, however, unilaterally maintained its state of emergency – and in fact imposed its strongest regulations and restrictions against the bar and restaurant industry since the height of the crisis. Specifically, on January 14, 2022, Mayor Frey issued Emergency Regulation 2022-5, which requires any patron of a place of public accommodation serving or selling food or drink to provide proof that the patron either meets certain vaccination standards or has a negative COVID-19 test performed by a medical provider within three days of entry.

26. The emergency regulation in relevant part as follows:

Effective January 19, 2022, any space of public accommodation in the City of Minneapolis where food and/or drink is sold or served indoors for consumption onsite shall admit only those persons who furnish proof of a Completed Vaccination Series against COVID-19 occurring at least two weeks prior to entry, or proof of a negative COVID-19 PCR or antigen test conducted by a medical professional from a sample that was collected from such person within three calendar days prior to the person's entry.

27. A "Completed Vaccination Series" is defined as meaning "after an individual has received the second dose in a two-dose series of an Approved COVID-19 Vaccine or a single dose in a one-dose Approved COVID-19 Vaccine. A person is considered fully vaccinated two weeks after they finish their Completed Vaccination Series." Emergency Regulation 2022-5, Definition 6.

28. An "Approved COVID-19 Vaccine" is defined as limited to "a vaccine that has been authorized or approved by either the Food and Drug Administration or the World Health Organization to prevent COVID-19, whether for emergency use or otherwise." Emergency Regulation 2022-5, Definition 7.

29. Thus, under Emergency Regulation 2022-5, to be considered actually vaccinated, a patron must not only have received certain pre-approved vaccines, but have received all doses to be considered properly vaccinated, and also must then wait two weeks after completing the final dose to enter a restaurant or bar in the City of Minneapolis.

30. This, however, is not sufficient to establish vaccination. Emergency Regulation 2022-5 further requires “proof of a Completed Vaccination Series against COVID-19,” which is defined to require the “presentation of a CDC-provided card, photograph of card, other government-approved record of vaccination, or an application approved by a governmental entity (e.g. Docket) to hold immunization information.” Emergency Regulation 2022-5, Definition 9.

31. While Emergency Regulation 2022-5 provides an alternative means for patrons to enter a restaurant or bar without complete vaccination by obtaining proof of a negative COVID-19 PCR or antigen, this route is no less burdensome. Sufficient proof of a negative COVID-19 test means “an e-mail, printout, or screen shot with the name of the individual and the test result showing the date of the test.” Emergency Regulation 2022-5, Definition 10.

32. Under Emergency Regulation 2022-5, not any test will suffice. Rather, only a “PRC or antigen test conducted by a medical professional” will be accepted. This requires individuals to go to a medical professional to obtain a test. This is a significant hurdle for many, as time, availability, cost, and access to care are all factors that determine and necessarily limit how, when, and how often an individual could take time to schedule an appointment with a medical professional to take a COVID-19 test.

33. This requirement is further contradictory to guidance and recommendations issued by the State of Minnesota, Centers for Disease Control and

Prevention (“CDC”), and medical professionals across the country, all of which adamantly promote and encourage at-home COVID-19 testing. In fact, in January 2022, the federal government allowed each home to order free at-home COVID-19 tests in an effort to validate and promote at-home testing. The CDC has stated as of December 29, 2021 that “COVID-19 self-tests....are one of many risk-reduction measures, along with vaccination, masking, and physical distancing, that protect you and others by reducing the changes of spreading SARS-CoV-2, the virus that causes COVID-19.”¹ The Minnesota Department of Health similarly promotes at-home saliva testing touting: “This saliva test is just as accurate as the nasal swab test. It tests if you have COVID-19 right now and can spread it to others.”² Yet, self-administered or home tests will not suffice under Emergency Regulation 2022-5.

34. Furthermore, to establish a valid test result, the sample must have been collected “within three calendar days prior to the person’s entry.” This requirement creates an absurdly limited window in time for a person to actually be able to obtain and use the results of a COVID-19 test. Most tests require 1-2 days to produce a result from the date the sample was collected. As a result, this leaves a prospective patron with likely just one day, at most maybe two, in which the test result can actually be used. This

¹ <https://www.cdc.gov/coronavirus/2019-ncov/testing/self-testing.html>

² <https://www.health.state.mn.us/diseases/coronavirus/testsites/athome.pdf>

requires the public to plan three days in advance whether they want to go out to eat or to a bar – an unprecedented restriction.

35. While Emergency Regulation 2022-5 identifies concerns about the existence and spread of COVID-19 cases in the City of Minneapolis as serving as grounds for the emergency declaration, at the time Mayor Frey imposed Emergency Regulation 2022-5, COVID-19 rates in the City of Minneapolis were falling significantly, with new cases peaking on January 6, 2022 at 1319 cases and then dropping to 242 new cases on January 13, 2022.

36. Additionally, while Emergency Regulation 2022-5 identifies the recognized benefit of masking for the spreading of the COVID-19 virus, there is no exception or alternative option provided for patrons to enter restaurants and bars by utilizing or wearing masks.

37. Instead, it is clear from the plain language set forth in Emergency Regulation 2022-5 emphasizing the benefits, developments, and availability of COVID-19 vaccinations, that Emergency Regulation 2022-5 is calculated and purposed to attempt to prod the general public toward vaccination.

Impact and Burden on Minnesotans and Minnesota Businesses

38. Plaintiffs have suffered greatly and are poised to continue to suffer under the declared emergency and particularly Emergency Regulation 2022-5.

39. In order to comply with the regulations, Plaintiffs, restaurants and bars in the City of Minneapolis, will have to hire additional staff in order to enforce the ordinance, including checking every patron for the complex requirements as between the proof of vaccination or testing, including the source of that information and the time lapse in relation to the same.

40. Plaintiffs anticipate not only having to hire the additional staff, but the staff having difficulty determining valid vaccination cards, forgeries, appropriate tests, language barriers, and time periods, not to mention having to deal with members of the public that are combative or argumentative regarding whether they can enter the establishment or the validity of the documents or information they are presenting for entry.

41. Further, Plaintiffs anticipate that customers of their establishments, including past and prospective, Minneapolis citizens and non-citizens, are likely to choose to go to restaurants and bars in surrounding cities that have no such requirements.

COUNT I
DECLARATORY JUDGMENT
(Minn. Stat. § 555.01, *et. seq.*)

42. Plaintiffs reallege and incorporate by reference herein the allegations in the preceding paragraphs of this Complaint.

43. Defendants, by and through Mayer Frey, have issued Emergency Regulation 2022-5 and it is being enforced in the City of Minneapolis.

44. Plaintiffs, as businesses providing indoor restaurant and bar services, are directly burdened, regulated, and damaged by Emergency Regulation 2022-5.

45. Minneapolis City Code Ordinances limit the mayor's right to invoke and enforce his emergency powers to occasions when "a local emergency" exists. Minn. Code of Ordinances § 128.50(a). The ordinances further describes an emergency as "[w]henever in the judgment of the mayor any unprecedented or severe catastrophe or disaster shall warrant it, an emergency may be declared..." *Id.*

46. No catastrophe or disaster – much less an unprecedented one – exists presently supporting or imposing a sense of immediacy or action to be taken to prevent or address any unforeseen event. COVID-19 has been a pandemic for over nearly two years, and while certainly tragic in its effects upon society during that time, developments have occurred reducing its emergent nature. The State of Minnesota has not saw fit to declare a current state of emergency in light of the present state of events and has not done so since July 2021, thereby further calling into question the basis for the City of Minneapolis to do so.

47. Minneapolis bars and restaurants, such as Plaintiffs, are being singled out without process to perform a function wholly unrelated to their business or licensures – namely identification and enforcement of individual's health status, including their vaccination status and/or whether they have obtained a negative COVID-19 test administered by a medical professional.

48. Minneapolis bars and restaurants are being used as pawns to further Mayor Frey's agenda of pushing for and convincing the public to get vaccinated. Whether the end being sought is noble, the scheme is forcing restaurants and bars to lose additional patrons and business that have already been reduced over the past two years and incur new costs and burdens to enforce the requirements of Emergency Regulation 2022-5.

49. These actions constitute a misuse of mayoral power aimed to further at best a long-term public health policy, and at minimum a personal agenda item of Mayor Frey, and are certainly not the intent or purpose for which the emergency powers outlined in Minneapolis Code of Ordinances §§ 128.50 or 128.60 or Minn. Stat. § 12.29.

50. The substantive provisions of Emergency Regulation 2022-5, which are aimed to address a long-term health policy for the City of Minneapolis, should be reserved for and enacted solely by the Minneapolis City Council via the legislative process.

51. Defendant Mayor Frey's proclamation of Emergency Regulation 2022-5 was an *ultra vires* act in that there is no actual emergency that existed at the time of the proclamation, or now, and therefore no authority to issue such a proclamation under Minneapolis City Code of Ordinances §§ 128.50 and 128.60, as well as Minn. Stat. § 12.29

52. An actual controversy exists between Plaintiffs and Defendants as to whether there was or is an actual emergency, as defined by the Minneapolis City Code of Ordinances and state statute upon which Mayor Frey may exercise his mayoral

emergency powers, including the issuance of an emergency declaration regulating and restricting the rights of individuals to enter restaurants and bars and requiring restaurants and bars to obtain and confirm proof of vaccination status or COVID-19 test results to serve patrons, as set forth in Emergency Regulation 2022-5 and authorized by Minneapolis City Code of Ordinances §§ 128.50 and 128.60, as well as Minn. Stat. § 12.29.

53. Based on the foregoing, Plaintiffs are entitled to a declaration by the Court as to whether Mayor Frey and/or the City of Minneapolis have exceeded authority in issuing and enforcing Emergency Regulation 2022-5.

WHEREFORE, Plaintiffs respectfully requests that this Court grant relief as follows:

1. Declaring that Emergency Regulation No. 2022-5 is invalid, void and/or ineffective on grounds that it is not authorized by Minneapolis City Code of Ordinances §§ 128.50 and 128.60, as well as Minn. Stat. § 12.29 and was an *ultra vires* act;
2. Entering a permanent injunction against Defendants prohibiting them from enforcing the provisions of Emergency Regulation No. 2022-5; and
3. For such other and further relief as this Court may deem just and equitable.

CHESTNUT CAMBRONNE PA

Dated: January 20, 2022

By: 

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ATTORNEYS FOR PLAINTIFFS**ACKNOWLEDGMENT**

Pursuant to Minn. Stat. § 549.211, subd. 1, the undersigned acknowledges that non-monetary sanctions and monetary sanctions, such as costs, disbursements, and reasonable attorney and witness fees, may be imposed.

Dated: January 20, 2022


Francis J. Rondoni