

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

operat

Minne

located

operat



ns and

"90's

office

is and

y, with

its reg

Club l

"Sneal

Bar an

"Urba

office

MINNESOTA

JUDICIAL

BRANCH

Hafiz

inafter

Pete's

inafter

stered

nment

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

taproc

Minne

corpor

Minne

one of



Street,

nesota

strista,

it least

inafter

“Bunk

Washi

Music

a hom

sued i

Street, Room 331, Minneapolis, Minnesota.

MINNESOTA

JUDICIAL

BRANCH

at 761

inkers

lopted

. being

. Fifth

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.

Consti
to Mir
§ 555.0
Proced



nesota
rsuant
n. Stat.
f Civil

namec
or son
542.09

MINNESOTA JUDICIAL BRANCH

of the
action,
and §
gency
/ID-19

Execu
(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.”

emerg
(3) day
power
within
beer ta



a local
f three
imited
nesses
nd 3.2
mayor

to rest
emerg
or the
promt
relatio
public
emergency.

MINNESOTA JUDICIAL BRANCH

ge an
vernor
ation,
tion in
protect
clared

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

18, 202

COVID

In cor

busine

signifi



bruary

nce of

apolis.

ns on

bars,

ended

only n

emerg

its dir

to exte

of its Emergency Regulations promulgated during the Covid-19 Local Public Health

Emergency, particularly those which offer critical support to local businesses, protected

MINNESOTA

JUDICIAL

BRANCH

o have

is saw

health

es and

mined

nation

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

emerg

Minne

so thro

City C

emerg

*City c
Includ*



ie, the

s done

apolis

ended,

Bars,

ns and

preser

peacet

emerg

emerg

and re

Mayor

MINNESOTA

JUDICIAL

BRANCH

ewide

related

ate of

he bar

, 2022,

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



individ

Vaccin

consid

Series.

has be

World

otherw

vaccin

receiv

MINNESOTA

JUDICIAL

BRANCH

er an

7ID-19

son is

nation

ie that

or the

ise or

tually

t have

it 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,

photo;

approval

Emergency

patron

negative

of a ne

the inc

2022-5

a “PR

require

hurdle

and ne

an appointment with a medical professional to take a COVID-19 test.



MINNESOTA

JUDICIAL

BRANCH

cation

ation.”

ns for

of of a

proof

ame of

ilation

r, only

This

ificant

rmine

chedule

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 t
2021 tl
vaccin
the cha
Depar
is just
spread



er 29,
; with
lucing
nesota
va test
id can
under

Emerg
collect
creates
use the
the dat
just or

MINNESOTA JUDICIAL BRANCH

e been
ement
in and
t from
likely
.. 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 sp

emerg

COVID

peakir

13, 202

benefi

alterna

wearir

Regula

19 vac

to pro

Impac



MINNESOTA

JUDICIAL

BRANCH

for the

2022-5,

cases

January

gnized

ion or

ing or

gency

COVID-

tempt

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

in rela

having

language

public

establi

entry.

includ

choose

preceding paragraphs of this Complaint.



MINNESOTA JUDICIAL BRANCH

e lapse

ie staff

tests,

of the

er the

ng for

ments,

ely to

ments.

in the

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

of Or

“[w]he

disaste

preser

or add

years,

have c

declar

done s

Minne

witho

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.



MINNESOTA JUDICIAL BRANCH

. Code

cy as

phe or

exists

revent

ly two

ments

fit to

as not

city of

ed out

ures –

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

patron
new co
a long
and ar
Minne



incur
-5.
at best
r Frey,
ned in
ch are

aimed
reserv
proces
an *ulti*
procla
Minne

MINNESOTA JUDICIAL BRANCH

uld be
slative
-5 was
of the
under
§ 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: _____

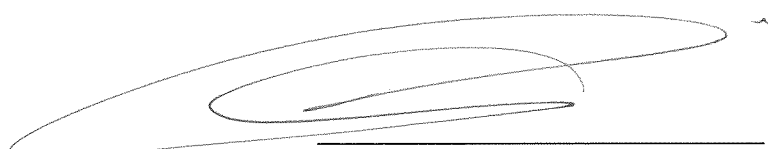
Francis J. Rondoni (#121903)
Jeffrey C. O'Brien (#304852)
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401
Telephone: (612) 339-7300
frondoni@chestnutcambronne.com
jobrien@chestnutcambronne.com

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