

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEARNS

SEVENTH JUDICIAL DISTRICT

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

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Kris Schiffler d/b/a Shadys Long Shots, Shady's
Inc., Shadys Hometown Tavern and Event
Center, Inc., Shady's of Rice, Inc., Shadys
Golden Eagle, Inc., and Shady's Silver Spur,
Inc.,

Defendants.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against Defendants Kris Schiffler d/b/a Shadys Long Shots, Shady's Inc., Shadys Hometown Tavern and Event Center, Inc., Shady's of Rice, Inc., Shadys Golden Eagle, Inc., and Shady's Silver Spur, Inc. (hereinafter, collectively "Shady's Taverns") 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 until at least June 12, 2020, pursuant to Executive Order 20-53. In order to slow "community spread" of COVID-19 and thereby protect public health and safety, on March 16, 2020 Governor Walz issued Executive Order 20-04, which ordered the closure of bars, taverns, restaurants, and other places of public accommodation for on-premises consumption until March 27, 2020, but allowed

restaurants to “offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service.” Thereafter, the closure of bars, taverns, restaurants, and other places of public accommodation for on-premises consumption was extended by Executive Orders 20-18, 20-33, and 20-48. The temporary closure of bars, taverns, restaurants, and other places of public accommodation for on-premises consumption is necessary to protect public health and safety because these are establishments where people gather and linger and where close physical contact is expected, thereby posing a risk to public health.

2. On April 17, 2020, Governor Walz signed a bill passed by the Minnesota Legislature allowing bars and restaurants selling take-out food to also sell wine and beer with their food. *See* 2020 Minn. Laws, ch. 75.

3. On May 13, 2020, Governor Walz issued Executive Order 20-56, extending the closure of bars, taverns, restaurants, and other public accommodations for on premises consumption set forth in Executive Order 20-04 “until May 31, 2020 at 11:59 pm.” Delivery service, window service, walk-up service, drive-through service, or drive-up service remained permissible. Executive Order 20-56 further instructed the Commissioners of Health, Employment and Economic Development, and Labor and Industry “to develop a phased plan to achieve the limited and safe reopening of bars, restaurants, and other places of public accommodation beginning on June 1, 2020.” Pursuant to Executive Order 20-56, the Commissioners’ plan will be presented to the public no later than May 20, 2020.

4. Despite the above-referenced Executive Orders, which have the full force and effect of law, Shady’s Taverns have repeatedly and publicly represented their intention to violate these orders by re-opening their six restaurant locations in Minnesota before June 1, 2020 for on-premises consumption. Attorney General Keith Ellison has authority to enforce Executive Order

20-56 and brings this action to prevent, enjoin, and remediate Shady's Taverns violations of Executive Order 20-56 in furtherance of the public's health and safety.

PARTIES

5. 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 Executive Order 20-56, to vindicate the State's sovereign and quasi-sovereign interests, and to remediate all harm arising out of—and provide full relief for—violations, or threatened violations, of Executive Order 20-56.

6. Defendant Kris Schiffler resides in Albany, Minnesota and maintains a business office at 1020 Forest Avenue, Albany, Minnesota 56307. Schiffler is the principal owner of the following six Minnesota restaurants: (1) Shady's Bar & Grill, 511 Main Street, New Munich, Minnesota 56356; (2) Shady's Railside, 30 Division Street North, Rice, Minnesota 56367; (3) Shady's Hometown Tavern and Event Center, 451 Railroad Avenue, Albany, Minnesota 56307; (4) Shady's Golden Eagle, 13218 County Road 103, Burtrum, Minnesota 56318; (5) Shady's Long Shots, 17467 Fairway Circle, Cold Spring, Minnesota 56320; and (6) Shady's Silver Spur, 133 Maine Street, St. Martin, Minnesota 56376. Schiffler also does business through the assumed name "Shady's Long Shots," and serves as the chief executive officer of the companies affiliated with each of the above-named restaurants. The entities affiliated with each of Defendants' restaurants are described further below.

7. Shady's Inc. is a Minnesota business located at 1020 Forest Avenue, Albany, Minnesota 56307. Schiffler owns and is the chief executive officer of Shady's Inc., which on information and belief is affiliated with the above-named restaurants.

8. Shadys Hometown Tavern and Event Center, Inc. is a Minnesota business located at 1020 Forest Avenue, Albany, Minnesota 56307. Schiffler owns and is the chief executive officer of Shadys Hometown Tavern and Event Center, Inc., which is affiliated with the tavern Shady's Hometown Tavern and Event Center located at 451 Railroad Avenue, Albany, Minnesota 56307.

9. Shady's of Rice, Inc. is a Minnesota business located at 1020 Forest Avenue, Albany, Minnesota 56307. Schiffler owns and is the chief executive officer of Shady's of Rice, Inc., which is affiliated with the bar and restaurant Shady's Railside located at 30 Division Street North, Rice, Minnesota 56367.

10. Shadys Golden Eagle, Inc. is a Minnesota business located at 1020 Forest Avenue, Albany, Minnesota 56307. Schiffler owns and is the chief executive officer of Shadys Golden Eagle, Inc., which is affiliated with the bar and restaurant Shady's Golden Eagle located at 13218 County Road 103, Burtrum, Minnesota 56318.

11. Shady's Silver Spur, Inc. is a Minnesota business located at 1020 Forest Avenue, Albany, Minnesota 56307. Schiffler owns and is the chief executive officer of Shady's Silver Spur, Inc., which is affiliated with the bar and restaurant Shady's Silver Spur located at 133 Maine Street, St. Martin, Minnesota 56376.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to Minnesota Statutes sections 8.01, 8.31, Executive Order 20-56, and under common law.

13. This Court has personal jurisdiction over Defendants because they have violated or threatened to violate Executive Order 20-56, thereby causing or threatening to cause injury to the public health and safety of Minnesota residents.

14. Venue in Stearns County is proper under Minnesota Statutes section 542.09 because the Defendants reside in Stearns County and the cause of action arose, in part, in Stearns County.

FACTUAL BACKGROUND

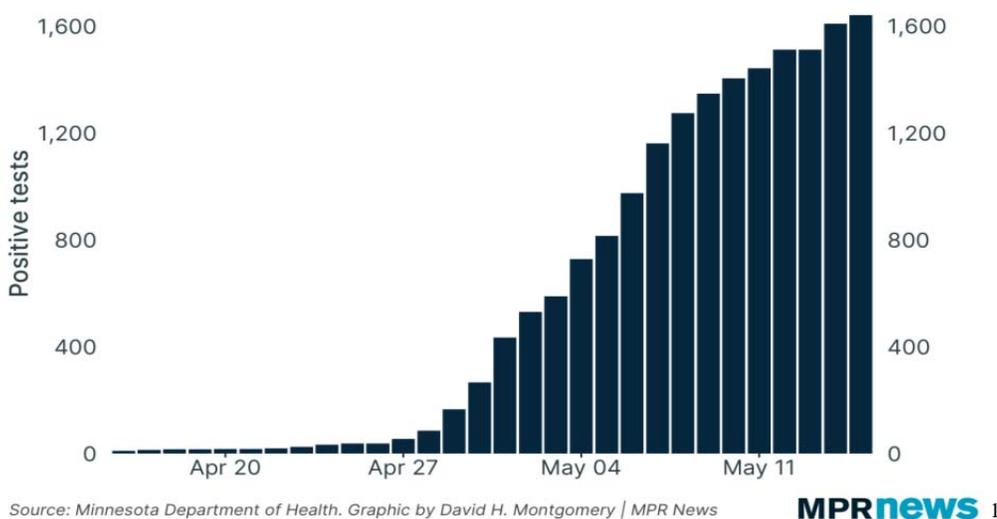
15. Minnesota's fight against the COVID-19 virus represents one of the greatest public health emergencies this state has handled in its 162-year history. In part, the magnitude of Minnesota's response has been in reaction to the uniquely virulent characteristics of the disease: In one study, researchers found that a single infected person likely spread the virus to 53 other people during the course of a single choir rehearsal. In the first week of this month, May 1-7, 2020, Minnesota's Department of Health confirmed 4,106 new cases of COVID-19. That weekly gain represents more than 25% of all cumulative confirmed infections in the entire state between March 5 and May 15, 2020. In short, 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.

16. COVID-19 kills people. In Minnesota alone, as of May 17, 2020, there have been at least 15,668 confirmed cases of COVID-19, and COVID-19 has already caused at least 722 deaths. Public gatherings at bars and restaurants pose major health risks during this pandemic. For example, in one study publicized by the national Centers for Disease Control and Prevention ("CDC"), a significant viral outbreak occurred at a family gathering at a restaurant. Not only did the family members who attended the meal become ill, but other patrons unassociated with the reunion became sick. The researchers' hypothesis indicates that the virus was spread simply through the air of the restaurant.

17. Minnesota has had success in keeping its infection rate and mortality count relatively lower than some other areas, in part through its swift and decisive response in restricting social gatherings and in restricting social interactions at places of high interactivity, such as sit-down bar and restaurant spaces. 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 Stearns County and the surrounding area, which has been a hot spot for new COVID-19 cases. Indeed, as news reports have indicated, positive confirmed cases of COVID-19 have increased swiftly in Stearns County from just 55 in early May to 1,161 by May 7, 2020:

Total COVID-19 cases in Stearns County, MN

Based solely on cases confirmed by the MN Department of Health.
Due to limited testing, most COVID-19 cases are undiagnosed.



¹ See Kristi Marohn, MPR NEWS, *Call to Investigate Poultry Plant as Stearns County COVID-19 Cases Rise* (May 7, 2020), available at <https://www.mprnews.org/story/2020/05/07/call-to-investigate-poultry-plant-as-stearns-county-covid19-cases-rise>.

18. According to another report, new COVID-19 cases in Stearns County increased by 454 percent over the first week of May, compared to a 95.5 percent increase for Minnesota as a whole over that same time period. Despite these troubling figures, Defendant Schiffler has publicly stated that “you have a better chance of getting eaten by a timber wolf or a grizzly bear than getting COVID-19.”

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 June 12, 2020, pursuant to Executive Order 20-53.

20. In order to protect public health and safety by slowing the “community spread” of COVID-19, on March 16, 2020, Governor Walz issued Executive Order 20-04, which ordered the closure of bars, taverns, restaurants, and other places of public accommodation for on-premises consumption until March 27, 2020. Executive Order 20-04 encouraged temporarily closed bars, taverns, and restaurants to “offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service.” Subsequently, Executive Order 20-04’s closure of bars, taverns, and restaurants was extended by Executive Orders 20-18, 20-33, and 20-48. The Minnesota Legislature passed a bill signed by the Governor allowing bars and restaurants selling take-out food to also sell up to one bottle of wine or up to a six-pack of beer, cider, or hard seltzer with their food. *See* 2020 Minn. Laws ch. 75.

21. The temporary closure of bars, taverns, restaurants, and other places of public accommodation for on-premises consumption is necessary to protect public health and safety

because these are establishments where people gather and linger and where close physical contact is expected, thereby posing a risk to public health.

22. On May 13, 2020, Governor Walz issued Executive Order 20-56, extending the closure of bars, taverns, restaurants, and other public accommodations for on premises consumption set forth in Executive Order 20-04 “until May 31, 2020 at 11:59 pm.” Executive Order 20-56 further instructed the Commissioners of Health, Employment and Economic Development, and Labor and Industry “to develop a phased plan to achieve the limited and safe reopening of bars, restaurants, and other places of public accommodation beginning on June 1, 2020.” The Order states that the Commissioners’ plan must be ready for presentation to the public no later than May 20, 2020.

23. Executive Order 20-56 was promulgated by the Governor under the authority of Minnesota Statutes section 12.21, subdivision 3, clause (1), was 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 20-56 has “the full force and effect of law” during the peacetime emergency. Paragraph Seven of Executive Order 20-56 took effect on May 17, 2020, at 11:59 p.m. Moreover, Executive Order 20-56 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 from businesses and injunctive relief.” Moreover, “any business owner, manager, or supervisor who requires or encourages any of their employees, contractors, vendors, volunteers, or interns to violate [Executive Order 20-56] is guilty of a gross misdemeanor and upon conviction must be punished by a fine not to exceed \$3,000 or by imprisonment for not more than a year.”

24. Shady's Taverns have repeatedly publicly represented their intention to violate Executive Order 20-56 by opening their six restaurant locations in Minnesota for on-premises consumption on Monday, May 18, 2020.

25. On or about May 13, Schiffler was interviewed by television news channel KMSP Fox 9 and publicly announced that he would be opening all six of his Minnesota restaurants for on-premises consumption on May 18, 2020. During the interview, Schiffler further stated he did not believe he would be held accountable for violating Executive Order 20-56:

We contacted our local sheriff's department in every bar that we own. A couple of them are in different counties, so we spoke with them. The answer is, we get a call we have to show up and we have to send a report but the report pretty much dies on the table. I don't think they're going to do anything after that.

26. Similar public announcements were made on a number of the Facebook pages for Shady's Taverns' six Minnesota restaurants, including Shady's Silver Spur located in Saint Martin:



Shady's Hometown Tavern and Event Center located in Albany:



And Shady's Railside located in Rice:



27. On May 15, 2020, an assistant attorney general with the Minnesota Attorney General's Office contacted Shady's Taverns' owner, Defendant Schiffler, and explained that reopening Shady's Taverns' six Minnesota restaurants on May 18 for on-premises consumption would constitute a clear violation of Executive Order 20-56. Schiffler acknowledged this, but nevertheless confirmed his intention and plan to open each of his six restaurants located in Minnesota on May 18. Following this call, Schiffler obtained counsel, who again confirmed during a telephone call with the Attorney General's Office on May 16, 2020, that Shady's

Taverns would be re-opening their Minnesota restaurants on May 18 for on-premises consumption. During this call, counsel also stated he would discuss the matter further with his clients.

28. Later in the day on May 16, 2020, Defendant Schiffler posted a video on Facebook and stated in part:

We're gonna to try to open [May] 20th. Governor Walz comes out with a new safety precaution plan that has taken him 8 weeks to get done. We hope that he gets that done. Umm if he doesn't, it says he has to have it done, so we're assuming it's going to be done on [May] 20th. There's no promises on us being open on [June] 1st. So what we're planning on doing is we wanna open on [May] 20th. Once we get that paperwork that says the health, what we need to do to follow the orders, we will get that to our health inspectors and get them approved ASAP umm and we'll try to open Wednesday, [May] 20th.

Defendant Schiffler further stated that he felt “betrayed” by local law enforcement, who he claims told him that they would “step down” and not enforce Shady’s Taverns violations of Executive Order 20-56.

29. Subsequently, after raising over \$160,000 on a GoFundMe online fundraiser, on May 17, 2020, Defendant Schiffler posted a new message on his personal Facebook account stating the following: “Shady’s Hometown Tavern in Albany will be open tomorrow, Monday May 18th at Noon!”

**COUNT I
VIOLATION OR THREATENED VIOLATION
OF EXECUTIVE ORDER 20-56**

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

31. Paragraph 7 of Executive Order 20-56 provides in relevant part:

a. Extension of temporary closure of bars, restaurants, and other places of public accommodation. The closure of bars, restaurants, and other public accommodations set forth in Executive Order 20-04, as amended by Executive Order 20-08 and 20-18, is extended until May 31, 2020 at 11:59 pm.

32. In turn, Executive Order 20-04 provides in pertinent part:

[T]he following places of public accommodation are closed to ingress, egress, use, and occupancy by members of the public:

- a. Restaurants, food courts, cafes, coffeehouses, and other places of public accommodation offering food or beverage for on-premises consumption, excluding institutional or in-house food cafeterias that serve residents, employees, and clients of businesses, child care facilities, hospitals, and long-term care facilities.
- b. Bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption.

33. Defendants' conduct, practices, actions, and threatened actions described in this Complaint constitute multiple violations, or threatened violations, of Executive Order 20-56.

PRAYER FOR RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to award judgment against Defendants as follows:

1. Declaring that Defendants' actions or threatened actions, as set forth above, constitute violations, or threatened violations of Executive Order 20-56;
2. Enjoining Defendants and their 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 of Executive Order 20-56;
3. Enjoining Defendants and their 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 operating for on premises consumption of food and beverage—or otherwise allowing ingress, egress, use,

and/or occupancy by members of the public—at any of their Minnesota bars and restaurants for the duration that the restrictions identified in Executive Order 20-56 are effective;

4. Ordering an expedited accounting of Defendants’ business activities in the State of Minnesota;

5. Awarding judgment against Defendants for restitution and disgorgement 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;

6. Awarding judgment against Defendants for civil penalties of up to \$25,000 pursuant to Minnesota Statutes section 8.31, subdivision 3, and 645.24, for each separate violation of Executive Order 20-04, as extended by Executive Order 20-56;

7. 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

8. Granting such further relief as provided by law or equity or as the Court deems appropriate and just.

Dated: May 17, 2020

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Jason Pleggenkuhle
JASON PLEGGENKUHLE
Assistant Attorney General
Atty. Reg. No. 0391772

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
Telephone: (651) 757-1147
jason.pleggenkuhle@ag.state.mn.us

Attorneys for Plaintiff, State of Minnesota

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