

No. 19-1948

United States Court of Appeals For the Eighth Circuit

Sarasota Wine Market, LLC, d/b/a Magnum Wine and Tastings; Heath Cordes; Michael Schlueter; Terrence French

Plaintiffs - Appellants

vs.

Eric Schmitt, Attorney General of Missouri; Dorothy Taylor, State Supervisor of the Missouri Div. of Alcohol and Tobacco Control; Michael L. Parson, Governor of Missouri

Defendants - Appellees

On appeal from the U.S. District Court for the Eastern District of Missouri, 4:17-cv-02792 HEA, Hon Henry E. Autry.

JOINT APPENDIX

James A. Tanford (IN16982-53)
Robert D. Epstein
Epstein Cohen Seif & Porter, LLP
50 S. Meridian St., #505
Indianapolis IN 46204
tanfordlegal@gmail.com
812-332-4966

Alan S. Mandel (MO29137)
MANDEL AND MANDEL, LLP
1108 Olive Street, Fifth Floor
St. Louis, MO 63101
314-621-1701
dsmm001@aol.com

Attorneys for Plaintiffs-Appellants

Katherine S. Walsh (MO37255)
Assistant Attorney General
P.O. Box 861
St. Louis, MO 63188
Tel: (314) 340-7861
Fax: (314) 340-7029
katherine.walsh@ago.mo.gov

Attorney for Defendants

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1. Docket Entries

CLOSED, APPEAL

**U.S. District Court
Eastern District of Missouri (St. Louis)
CIVIL DOCKET FOR CASE #: 4:17-cv-02792-HEA**

Sarasota Wine Market, LLC et al v. Greitens et al
Assigned to: District Judge Henry Edward Autrey
Cause: 42:1983 Civil Rights Act

Date Filed: 11/29/2017
Date Terminated: 03/29/2019
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
11/29/2017	<u>1</u>	COMPLAINT against defendant All Defendants with receipt number 0865-6261301, in the amount of \$400 Non-Jury Demand,, filed by Sarasota Wine Market, LLC, Michael Schlueter. (Attachments: # <u>1</u> Civil Cover Sheet Civil Cover Sheet, # <u>2</u> Original Filing Form Original Filing Form)(Mandel, Alan) (Entered: 11/29/2017)
11/30/2017		Case Opening Notification: All non-governmental organizational parties (corporations, limited liability companies, limited liability partnerships) must file Disclosure of Organizational Interests Certificate (moed-0001.pdf). Judge Assigned: Honorable Henry E. Autrey. (MFG) (Entered: 11/30/2017)
12/04/2017	<u>2</u>	NOTICE OF PROCESS SERVER by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter Process Server: Rufus Harmon (Attachments: # <u>1</u> Summons Summons to Eric Greitens, # <u>2</u> Summons Summons to Joshua Hawley, # <u>3</u> Summons Summons to Keith Hendrickson)(Mandel, Alan) (Entered: 12/04/2017)
12/05/2017		Summons Issued as to defendant All Defendants. The summons was emailed to Alan S. Mandel. (MFG) (Entered: 12/05/2017)
12/28/2017	<u>3</u>	ENTRY of Appearance by Katherine S. Walsh for Defendants Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson. (Walsh, Katherine) (Entered: 12/28/2017)
12/28/2017	<u>4</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Defendants Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson. (Walsh, Katherine) (Entered: 12/28/2017)
12/29/2017	<u>5</u>	Docket Text ORDER: as to Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson Re: <u>4</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint, filed by Keith Hendrickson, Eric R. Greitens, Joshua D. Hawley; GRANTED - SO ORDERED. (Eric R. Greitens answer due 1/16/2018; Joshua D. Hawley answer due 1/16/2018; Keith Hendrickson answer due 1/16/2018.) Signed by District Judge Henry Edward Autrey on 12/29/17. (KJS) (Entered: 12/29/2017)
01/02/2018	<u>6</u>	SUMMONS Returned Executed filed by Sarasota Wine Market, LLC, Michael Schlueter, Heath Cordes. Keith Hendrickson served on 12/11/2017, answer due 1/16/2018. (Mandel, Alan) (Entered: 01/02/2018)
01/02/2018	<u>7</u>	SUMMONS Returned Executed filed by Sarasota Wine Market, LLC, Michael Schlueter, Heath Cordes. Joshua D. Hawley served on 12/11/2017, answer due 1/16/2018. (Mandel, Alan) (Entered: 01/02/2018)
01/02/2018	<u>8</u>	SUMMONS Returned Executed filed by Sarasota Wine Market, LLC, Michael Schlueter, Heath Cordes. Eric R. Greitens served on 12/11/2017, answer due 1/16/2018. (Mandel, Alan) (Entered: 01/02/2018)
01/04/2018	<u>9</u>	MOTION for Leave to Continue Pro Hac Vice in Refiling of a Prior Case by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Attachments: # <u>1</u> Exhibit Former motion, # <u>2</u> Certificate of Good Standing Certificate previously filed)(Tanford, James) (Entered: 01/04/2018)
01/05/2018	<u>10</u>	Docket Text ORDER: Re: <u>9</u> MOTION for Leave to Continue Pro Hac Vice in Refiling of a Prior Case by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Attachments: # <u>1</u> Exhibit Former motion, # <u>2</u> Certificate of Good Standing Certificate previously filed)(Tanford, James) filed by Heath Cordes,

		Sarasota Wine Market, LLC, Michael Schlueter ; ORDERED GRANTED HEA. Signed by District Judge Henry Edward Autrey on 1/5/18. (CLA) (Entered: 01/05/2018)
01/08/2018	<u>11</u>	DISCLOSURE OF ORGANIZATIONAL INTERESTS CERTIFICATE by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. Parent companies: None, Subsidiaries: None, Publicly held company: None,. (Tanford, James) (Entered: 01/08/2018)
01/08/2018	<u>12</u>	AMENDED DOCUMENT by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. Amendment to <u>1</u> Complaint, <i>Amended Original Filing Form</i> . (Tanford, James) (Entered: 01/08/2018)
01/08/2018	<u>13</u>	First MOTION for Leave to Continue Pro Hac Vice in Refiling of a Prior Case by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Attachments: # <u>1</u> Exhibit A--Former Motion, # <u>2</u> Exhibit B--Certificate of Good Standing Previously Filed)(Epstein, Robert) (Entered: 01/08/2018)
01/09/2018	<u>14</u>	Docket Text ORDER: Re: <u>13</u> First MOTION for Leave to Continue Pro Hac Vice in Refiling of a Prior Case by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter ; ORDERED GRANTED. Signed by District Judge Henry Edward Autrey on 1/9/18. (KXS) (Entered: 01/09/2018)
01/12/2018	<u>15</u>	MOTION for Leave to Continue Pro Hac Vice in Refiling of a Prior Case by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Attachments: # <u>1</u> Exhibit Previously Filed Motion to Appear Pro Hac Vice, # <u>2</u> Exhibit Previously Filed Certificate of Good Standing)(Swanson, Kristina) (Entered: 01/12/2018)
01/16/2018	<u>16</u>	Docket Text ORDER: Re: <u>15</u> MOTION for Leave to Continue Pro Hac Vice in Refiling of a Prior Case by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Attachments: # <u>1</u> Exhibit Previously Filed Motion to Appear Pro Hac Vice, # <u>2</u> Exhibit Previously Filed Certificate of Good Standing)(Swanson, Kristina) filed by Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter ; ORDERED GRANTED HEA. Signed by District Judge Henry Edward Autrey on 1/16/18. (CLA) (Entered: 01/16/2018)
01/16/2018	<u>17</u>	MOTION to Dismiss Case by Defendants Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson. (Walsh, Katherine) (Entered: 01/16/2018)
01/16/2018	<u>18</u>	MEMORANDUM in Support of Motion re <u>17</u> MOTION to Dismiss Case filed by Defendants Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson. (Walsh, Katherine) (Entered: 01/16/2018)
01/19/2018	<u>19</u>	Docket Text ORDER: Re: <u>17</u> MOTION to Dismiss Case filed by Keith Hendrickson, Eric R. Greitens, Joshua D. Hawley ; UNDER SUBMISSION AWAITING RESPONSE. Signed by District Judge Henry Edward Autrey on 1/19/18. (KJS) (Entered: 01/19/2018)
01/22/2018	<u>20</u>	MEMORANDUM in Opposition re <u>17</u> MOTION to Dismiss Case filed by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Tanford, James) (Entered: 01/22/2018)
01/26/2018	<u>21</u>	MOTION for Extension of Time to File Response/Reply as to <u>17</u> MOTION to Dismiss Case by Defendants Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson. (Walsh, Katherine) (Entered: 01/26/2018)
01/31/2018	<u>22</u>	Docket Text ORDER: Re: <u>21</u> MOTION for Extension of Time to File Response/Reply as to <u>17</u> MOTION to Dismiss Case filed by Keith Hendrickson, Eric R. Greitens, Joshua D. Hawley; GRANTED - SO ORDERED. (Response to Court due by 2/5/2018.) Signed by District Judge Henry Edward Autrey on 1/31/18. (KJS) (Entered: 01/31/2018)
02/02/2018	<u>23</u>	REPLY to Response to Motion re <u>17</u> MOTION to Dismiss Case filed by Defendants Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson. (Walsh, Katherine) (Entered: 02/02/2018)
02/06/2018	<u>24</u>	Consent MOTION for Hearing re <u>17</u> MOTION to Dismiss Case <i>and to allow oral argument</i> by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Tanford, James) (Entered: 02/06/2018)
02/16/2018	<u>25</u>	ORDER - IT IS HEREBY ORDERED that oral argument on Defendants Motion to Dismiss [Doc. # <u>17</u>] is set for Tuesday, March 6, 2018, at 1:30 p.m. in the courtroom of the undersigned; re: granting <u>24</u> Motion for Hearing. Signed by District Judge Henry Edward Autrey on 02/16/2018. (AAS) (Entered: 02/16/2018)
02/23/2018	<u>26</u>	ORDER - IT IS HEREBY ORDERED that on oral motion of Defendants and by consent of the parties, the oral argument on Defendants Motion to Dismiss [Doc. # <u>17</u>] set for Tuesday, March 6, 2018, is reset to April 9, 2018, at 11:30 a.m. in the courtroom of the undersigned. (Motion Hearing set for 4/9/2018 11:30 AM before District Judge Henry Edward Autrey.) Signed by District Judge Henry Edward Autrey on 2/23/18. (KJS) (Entered: 02/23/2018)
02/26/2018	<u>27</u>	NOTICE Recent Authority Pertinent to Motion to Dismiss: by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter re <u>17</u> MOTION to Dismiss Case (Tanford, James) (Entered: 02/26/2018)
04/09/2018	<u>28</u>	Minute Entry for proceedings held before District Judge Henry Edward Autrey: Motion Hearing held on 4/9/2018 re <u>17</u> MOTION to Dismiss Case filed by Keith Hendrickson, Eric R. Greitens, Joshua D. Hawley. Oral arguments heard by both parties counsel. Court orders parties to file an proposed opinion memorandum & order within 10 days from the date of this hearing.(Amended/Supplemental Pleadings due by 4/19/2018.). (Court

		Reporter:Angela Daley, Angela_Daley@moed.uscourts.gov, 314-244-7978) (FTR Gold: No) (AAS) (Entered: 04/09/2018)
04/19/2018	<u>29</u>	MEMORANDUM re <u>28</u> Motion Hearing,,, Set Deadlines/Hearings,, <i>Defendants' Proposed Opinion Memorandum and Order</i> by Defendants Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson. (Walsh, Katherine) (Entered: 04/19/2018)
06/15/2018	<u>30</u>	OPINION, MEMORANDUM AND ORDER - IT IS HERBY ORDERED that the Defendants Motion to Dismiss [Doc. No. <u>17</u>] is GRANTED. IT IS FURTHER ORDERED that the Complaint is dismissed. IT IS FURTHER ORDERED that Plaintiffs are given leave to file an Amended Complaint within 10 days of the date of this order. Failure to file same will result in dismissal with prejudice. (Amended/Supplemental Pleadings due by 6/25/2018.) Signed by District Judge Henry Edward Autrey on 06/15/2018. (AAS) (Entered: 06/15/2018)
06/22/2018	<u>31</u>	MOTION for Leave to Amend Complaint by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Attachments: # <u>1</u> Exhibit A-Proposed Amended Complaint, # <u>2</u> Text of Proposed Order Granting Motion for Leave to Amend Complaint)(Epstein, Robert) (Entered: 06/22/2018)
06/22/2018	<u>32</u>	MOTION for Relief <i>from</i> a Final Order by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Epstein, Robert) (Entered: 06/22/2018)
06/22/2018	<u>33</u>	MEMORANDUM in Support of Motion re <u>32</u> MOTION for Relief <i>from</i> a Final Order filed by Plaintiffs Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter. (Epstein, Robert) (Entered: 06/22/2018)
06/25/2018	<u>34</u>	Docket Text ORDER: Re: <u>31</u> MOTION for Leave to Amend Complaint filed by Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter; REQUEST FOR LEAVE TO AMEND IS DENIED AT THIS TIME - SO ORDERED. <u>32</u> MOTION for Relief <i>from</i> a Final Order filed by Heath Cordes, Sarasota Wine Market, LLC, Michael Schlueter; MOTION IS GRANTED TO THE EXTENT THAT THE INITIAL ORDER IS VACATED AND HELD FOR NAUGHT. A NEW OPINION, MEMORANDUM AND ORDER IS FORTHCOMING - SO ORDERED. Signed by District Judge Henry Edward Autrey on 6/25/18. (KJS) (Entered: 06/25/2018)
06/26/2018	<u>35</u>	AMENDED OPINION MEMORANDUM AND ORDER IT IS HERBY ORDERED that the Defendants Motion to Dismiss [Doc. No. <u>17</u>] is GRANTED. IT IS FURTHER ORDERED that the Complaint is dismissed.IT IS FURTHER ORDERED that Plaintiffs are given leave to file an Amended Complaint within 10 days of the date of this order. Failure to file same will result in dismissal with prejudice. Response to Court due by 8/5/2018. Signed by District Judge Henry Edward Autrey on 6/26/18. (CLA) (Entered: 06/26/2018)
06/28/2018	<u>36</u>	AMENDED COMPLAINT against defendant Eric R. Greitens, Joshua D. Hawley, Keith Hendrickson Amendment to <u>1</u> Complaint, , filed by Sarasota Wine Market, LLC, Michael Schlueter, Heath Cordes. Related document: <u>1</u> Complaint, filed by Sarasota Wine Market, LLC, Michael Schlueter.(Epstein, Robert) (Entered: 06/28/2018)
07/12/2018	<u>37</u>	MOTION to Dismiss Case by Defendants Joshua D. Hawley, Keith Hendrickson, MICHAEL L. PARSON. (Walsh, Katherine) (Entered: 07/12/2018)
07/12/2018	<u>38</u>	MEMORANDUM in Support of Motion re <u>37</u> MOTION to Dismiss Case filed by Defendants Joshua D. Hawley, Keith Hendrickson, MICHAEL L. PARSON. (Walsh, Katherine) (Entered: 07/12/2018)
07/18/2018	<u>39</u>	MEMORANDUM in Opposition re <u>37</u> MOTION to Dismiss Case filed by Plaintiffs Heath Cordes, TERRENCE FRENCH, Sarasota Wine Market, LLC, Michael Schlueter. (Tanford, James) (Entered: 07/18/2018)
07/25/2018	<u>40</u>	REPLY to Response to Motion re <u>37</u> MOTION to Dismiss Case filed by Defendants Joshua D. Hawley, Keith Hendrickson, MICHAEL L. PARSON. (Walsh, Katherine) (Entered: 07/25/2018)
09/28/2018	<u>41</u>	NOTICE Action By U.S. Supreme Court: by Plaintiffs Heath Cordes, TERRENCE FRENCH, Sarasota Wine Market, LLC, Michael Schlueter (Tanford, James) (Entered: 09/28/2018)
10/01/2018	<u>42</u>	NOTICE of Supplemental Authority re <u>37</u> MOTION to Dismiss Case by Plaintiffs Heath Cordes, TERRENCE FRENCH, Sarasota Wine Market, LLC, Michael Schlueter . (Attachments: # <u>1</u> Supplement New Authority) (Tanford, James) (Entered: 10/01/2018)
10/04/2018	<u>43</u>	MEMORANDUM re <u>41</u> Notice (Other) by Defendants Joshua D. Hawley, Keith Hendrickson, MICHAEL L. PARSON. (Walsh, Katherine) (Entered: 10/04/2018)
10/04/2018	<u>44</u>	MEMORANDUM re <u>42</u> Notice of Supplemental Authority by Defendants Joshua D. Hawley, Keith Hendrickson, MICHAEL L. PARSON. (Walsh, Katherine) (Entered: 10/04/2018)
03/29/2019	<u>45</u>	OPINION MEMORANDUM AND ORDER IT IS HERBY ORDERED that the Defendants Motion to Dismiss Plaintiffs Amended Complaint [Doc. No. <u>37</u>] is GRANTED.A separate Order of Dismissal in accordance with this Opinion, Memorandum and Order is entered this same date. <u>37</u> Signed by District Judge Henry Edward Autrey on 3/29/19. (CLA) (Entered: 03/29/2019)
03/29/2019	<u>46</u>	ORDER OF DISMISSAL IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this action is DISMISSED. Signed by District Judge Henry Edward Autrey on 3/29/19. (CLA) (Entered: 03/29/2019)

04/25/2019	<u>47</u>	NOTICE OF APPEAL as to <u>45</u> Memorandum & Order, <u>46</u> Order of Dismissal (case - Stipulation of Dismissal) by Plaintiffs Heath Cordes, TERRENCE FRENCH, Sarasota Wine Market, LLC, Michael Schlueter. Filing fee \$ 505, receipt number 0865-7171921. (Entered: 04/25/2019)
05/02/2019	<u>48</u>	NOTICE Certificate that No Transcript Will Be Ordered: by Plaintiffs Heath Cordes, TERRENCE FRENCH, Sarasota Wine Market, LLC, Michael Schlueter re <u>47</u> Notice of Appeal, (Tanford, James) (Entered: 05/02/2019)
05/08/2019	<u>49</u>	NOTIFICATION OF APPEAL AND NOA SUPPLEMENT by clerk to USCA regarding <u>45</u> Memorandum & Order, <u>46</u> Order of Dismissal (case - Stipulation of Dismissal). Notice of Appeal filed on 04/25/2019 by Plaintiffs Heath Cordes, TERRENCE FRENCH, Sarasota Wine Market, LLC, Michael Schlueter. NOTIFICATION TO COUNSEL AND PRO SE PARTY: FILE REQUEST FOR TRANSCRIPT WITH DISTRICT COURT CLERKS OFFICE.(MFG) (Entered: 05/08/2019)
05/08/2019	<u>50</u>	Initial Notification from USCA for <u>47</u> Notice of Appeal, filed by Heath Cordes, Sarasota Wine Market, LLC, TERRENCE FRENCH, Michael Schlueter USCA Appeal Number: 19-1948(KJS) (Entered: 05/09/2019)
05/08/2019	<u>51</u>	Briefing Schedule from USCA for <u>47</u> Notice of Appeal, filed by Heath Cordes, Sarasota Wine Market, LLC, TERRENCE FRENCH, Michael Schlueter USCA Appeal Number: 19-1948 Transcript due: 6/17/19 (See attached document for all other deadlines.)(KJS) (Entered: 05/09/2019)
05/09/2019	<u>52</u>	Briefing Schedule from USCA for <u>47</u> Notice of Appeal, filed by Heath Cordes, Sarasota Wine Market, LLC, TERRENCE FRENCH, Michael Schlueter USCA Appeal Number: 19-1948 Transcript due: 6/17/19 (See attached document for all other deadlines.)(CLA) (Entered: 05/09/2019)

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2. Complaint

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SARASOTA WINE MARKET, LLC)
d/b/a MAGNUM WINE AND TASTINGS,)
HEATH CORDES,)
and MICHAEL SCHLUETER)

Plaintiffs,)

vs.)

ERIC GREITENS Governor of Missouri,)
JOSHUA HAWLEY Attorney General of Missouri,)
and KEITH HENDRICKSON, Acting Supervisor)
of the Missouri Division of Alcohol and Tobacco)
Control,)

Defendants.)

COMPLAINT

Plaintiffs make the following allegations based upon information and belief, except for the allegations pertaining to Plaintiffs, which are based upon personal knowledge.

INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of a Missouri law that allows in-state retailers to ship wine directly to consumers but prohibits out-of-state retailers from doing so. A Missouri retailer may obtain a liquor dealer permit under Rev. Stat. Mo. §311.200.1 that allows it to sell wine from its premises, to deliver wine to consumers away from the premises, Rev. Stat. Mo. §311.300.2, and to use a common carrier to make those deliveries. Rev. Stat. Mo. §311.185.4. An out-of-state retailer may not obtain this permit because it is reserved for

Missouri citizens only, Rev. Stat. Mo. §311.060.1, and may not sell or deliver wine into Missouri without a permit. Rev. Stat. Mo. §311.050. The plaintiffs seek a declaratory judgment that this regulatory scheme is unconstitutional for two reasons: (1) it violates the Commerce Clause and *Granholm v. Heald*, 544 U.S. 460 (2005), because it discriminates against out-of-state wine retailers engaged in interstate commerce, and (2) it violates the Privileges and Immunities Clause because it denies nonresident wine merchants the privilege of engaging in their occupation in Missouri on terms equivalent to those given to citizens of Missouri. The plaintiffs seek an injunction barring the defendants from enforcing these laws and requiring them to allow out-of-state retailers to sell and ship wine to Missouri consumers upon the same terms as in-state retailers.

JURISDICTION

1. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.

2. The Court has authority to grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PLAINTIFFS

3. Consumer Plaintiff Michael Schlueter is a resident of St. Louis, Missouri. He is over the age of twenty-one, does not live in a dry county, and is legally permitted to purchase, receive, possess and drink wine at his residence. He is a regular purchaser and consumer of fine wine and would purchase wine from out-of-state retailers and have those wines shipped to his residence in Missouri, if Missouri law permitted him to do so.

4. Plaintiff Sarasota Wine Market, LLC, d/b/a Magnum Wine and Tastings is a Florida limited liability company that operates a wine retail store in Sarasota, Florida. Magnum Wine and Tastings is located on the mainland in Sarasota, which is a major tourist location. Magnum Wine and Tastings has customers from all over the country, including many from Missouri, who visit while on vacation or have retired to Sarasota. It has developed long-term relationships with customers for whom it makes special purchases. It has received requests that it sell and ship wine to Missouri from customers who have moved to Missouri or who wish to send gifts of wine to Missouri residents, but is unable to do so as a result of the Missouri ban. It intends to sell and ship wines directly to consumers in Missouri if the laws prohibiting such sales and shipments are removed or declared unconstitutional.

5. Heath Cordes is a professional wine consultant, advisor, and merchant who resides in and is a citizen of Florida. He owns and operates Magnum Wine and Tastings in Sarasota.

6. Magnum Wine and Tastings maintains an Internet web site, has previously handled deliveries and shipping of wine that was purchased from its retail stores or ordered through national wine clubs, and intends to do so.

7. Plaintiffs intend to pay all taxes that may be due on such interstate shipments and to comply with all other non-discriminatory state regulations, including obtaining licenses.

DEFENDANTS

8. Defendants are sued in their official capacities.

9. Defendant Eric Greitens is the Governor of Missouri and is the chief executive officer.

10. Defendant Joshua Hawley is the Attorney General of Missouri and is generally empowered to enforce Missouri laws.

11. Defendant Keith Hendrickson is the Acting Supervisor of the Missouri Division of Alcohol and Tobacco Control, which is charged with enforcing Missouri liquor control laws, including the ones challenged in this lawsuit.

12. Defendants are acting under color of state law when they enforce or supervise the enforcement of the statutes and regulations challenged herein.

Count I: Commerce Clause Violation

13. In the State of Missouri, a resident wine retailer can obtain a license from Defendants which allows it to sell, deliver, and ship by common carrier directly to Missouri consumers any wine that it has in its inventory.

14. A Missouri wine retailer may obtain wine for resale from distributors, auction houses and private collections.

15. The Defendants will issue an off-premises retail license described in the previous paragraphs only to wine retailers located in the State of Missouri.

16. Magnum Wine and Tastings is not located in Missouri, is not eligible for a Missouri off-premises license, and is prohibited by law from selling, delivering or shipping wine from its inventory directly to consumers in Missouri.

17. No other Missouri license is available to Magnum Wine and Tastings that would allow it to sell, deliver, and ship wine from its inventory to consumers in Missouri. It would obtain such a license if one were available.

18. Michael Schlueter is a wine consumer and he wants the opportunity to buy wine directly from Magnum Wine and Tastings and other wine retailers outside of Missouri and to have these wines delivered to his residence.

19. Some wines that Mr. Schlueter wants to buy are not available in retail stores in Missouri but are available from retail stores in other states. This includes older vintages no longer generally available except at specialty retailers located outside Missouri, and current vintages that have sold out locally after receiving favorable reviews or because few bottles of limited production wine were allocated to Missouri.

20. Most retailers who carry rare and unusual wine are located in California or New York, and Mr. Schlueter cannot afford the time and expense of traveling to out-of-state retailers to purchase a few bottles of rare wine and personally transport them home.

21. Plaintiffs cannot complete the transactions described in paragraphs 18 and 19 because the laws of Missouri prohibit direct sales and shipments of wine from out-of-state retailers to in-state consumers and will not issue any kind of license that would allow such transactions.

22. If Magnum Wine and Tastings were permitted to sell, ship and deliver its wine directly to consumers in the State of Missouri, it would obtain a license if one were available and would comply with the same rules concerning labeling, shipping, reporting, obtaining proof of age, and paying taxes as in-state retailers do.

23. By refusing to issue a license to out-of-state retailers that would allow them to sell, deliver and ship wine upon the same terms as in-state retailers, the State of Missouri is discriminating against interstate commerce and protecting the economic interest of

local businesses by shielding them from competition, in violation of the Commerce Clause of the United States Constitution.

Count II: Privileges and Immunities Clause Violation

24. Plaintiffs repeat and re-allege paragraphs 1-23 as if set out fully herein.

25. Heath Cordes is a professional wine consultant, advisor, and merchant who resides in and is a citizen of Florida. He owns and operates Magnum Wine and Tastings in Sarasota.

26. Mr. Cordes develops personal relationships with many of his customers, makes special wine purchases for them, consults with them about wine in person, by telephone and by Internet, and sells and delivers wine to them. Many of his regular customers live part of the year in Florida and part of the year in other states, including Missouri.

27. Mr. Cordes has also received requests from his customers to send wine to residents of Missouri as gifts.

28. Some wines wanted by Mr. Cordes' customers are difficult to obtain because they are old and only sold at auction, available only in limited allocated amounts or only for a limited time, or scarce because of their popularity.

29. Mr. Cordes wants to practice his profession as a wine merchant in Missouri by consulting with, obtaining wines for, and delivery wines to Missouri residents, but is prevented from doing so by Missouri law.

30. Mr. Cordes has not applied to Missouri officials for a retail license because it would be futile to do so since he is not a resident of Missouri and residency is required for a retail wine dealer permit.

31. If a license were available on terms equivalent to those for Missouri citizens, Mr. Cordes would obtain it. He does not ask for the right to engage in the unlicensed sale of wine in Missouri.

32. Being a professional wine merchant who sells and ships wine to Missouri residents is a lawful activity for citizens of Missouri who may obtain a license to do so.

33. No substantial reason exists for denying citizens of Florida the same privilege to consult about, advise on, obtain, sell, deliver and ship wine to Missouri consumers as is given to citizens of Missouri.

34. Missouri's ban on wine sales and deliveries by out-of-state merchants and its prohibition against issuing licenses to nonresidents, denies Mr. Cordes the privilege to engage in his occupation in the state upon the same terms as Missouri citizens, and therefore violates the Privileges and Immunities Clause in Article IV of the United States Constitution.

Request For Relief

WHEREFORE, Plaintiff seeks the following relief:

A. Judgment declaring Missouri's statutory scheme that prohibits out-of-state retailers from selling, delivering and shipping wine directly to a Missouri consumer, including Rev. Stat. Mo. §§-311.060, unconstitutional as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring Missouri's statutory scheme that prohibits a nonresident from obtaining a license to sell, deliver and ship wine directly to Missouri consumers, including Rev. Stat. Mo. Stat. 311.060 unconstitutional as a violation of the Privileges and Immunities Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those statutes and requiring them to allow out-of-state wine retailers to obtain licenses and to sell, ship, and deliver wine directly to customers in Missouri.

D. Plaintiffs do not request that the State be enjoined from collecting any tax due on the sale of wine.

E. An award of costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

F. Such other relief as the Court deems appropriate to afford Plaintiffs full relief.

Respectfully submitted,

Attorneys for Plaintiffs

/s/ Robert D. Epstein

Robert D. Epstein (Indiana Attorney No. 6726-49)
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
Tel: 317-639-1326
Fax: 317-638-9891
Rdepstein@aol.com

/s/ James A. Tanford

James A. Tanford (Indiana Attorney No. 16982-53)
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
Tel: 812-332-4966
Fax: 317-638-9891
tanfordlegal@gmail.com

/s/ Alan S. Mandel

Alan S. Mandel (Missouri Attorney No. 29137)
Mandel & Mandel LLP
1108 Olive Street, Fifth Floor
St. Louis, MO 63101
Tel: 877-893-1256
Fax: 314-621-4800
dsmm001@aol.com

3. Amended Complaint **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SARASOTA WINE MARKET, LLC
d/b/a MAGNUM WINE AND TASTINGS,
HEATH CORDES,
MICHAEL SCHLUETER,
and TERRENCE FRENCH

Plaintiffs,

vs.

MICHAEL L PARSON Governor of Missouri,
JOSHUA HAWLEY Attorney General of Missouri,
and KEITH HENDRICKSON, Acting Supervisor
of the Missouri Division of Alcohol and Tobacco
Control,

Defendants.

Case No. 4:17-cv-2792 HEA

AMENDED COMPLAINT

Plaintiffs make the following allegations based upon information and belief, except for the allegations pertaining to Plaintiffs, which are based upon personal knowledge.

INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of a Missouri law that allows in-state retailers to ship wine directly to consumers but prohibits out-of-state retailers from doing so. A Missouri retailer may obtain a liquor dealer permit under Rev. Stat. Mo. §311.200.1 that allows it to sell wine from its premises, to deliver wine to consumers away from the premises, Rev. Stat. Mo. §311.300.2, and to use a common carrier to make those deliveries. Rev. Stat. Mo. §311.185.4. An out-of-state retailer may not obtain this permit because it is reserved for

Missouri citizens only, Rev. Stat. Mo. §311.060.1, and may not sell or deliver wine into Missouri without a permit. Rev. Stat. Mo. §311.050. The plaintiffs seek a declaratory judgment that this regulatory scheme is unconstitutional for two reasons: (1) it violates the Commerce Clause and *Granholm v. Heald*, 544 U.S. 460 (2005), because it discriminates against out-of-state wine retailers engaged in interstate commerce, and (2) it violates the Privileges and Immunities Clause because it denies nonresident wine merchants the privilege of engaging in their occupation in Missouri on terms equivalent to those given to citizens of Missouri. The plaintiffs seek an injunction barring the defendants from enforcing these laws and requiring them to allow out-of-state retailers to sell and ship wine to Missouri consumers upon the same terms as in-state retailers.

JURISDICTION

1. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.

2. The Court has authority to grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PLAINTIFFS

3. Consumer Plaintiff Michael Schlueter is a resident of St. Louis, Missouri. He is over the age of twenty-one, does not live in a dry county, and is legally permitted to purchase, receive, possess and drink wine at his residence. He is a regular purchaser and consumer of fine wine and would purchase wine from out-of-state retailers and have those wines shipped to his residence in Missouri, if Missouri law permitted him to do so.

4. Consumer Plaintiff Terrence French is a retired teacher who resides in Columbus, Missouri. He has also worked in the retail sale of wine. Mr. French finds it difficult to locate the wines he desires in Columbus, Missouri. He prefers to order via the internet. He has been refused sales of wine by out-of-state retailers due to Missouri's ban on out-of-state sales, shipment, and delivery of wine from out-of-state sources. Mr. French particularly wants to purchase European and South American wines which are not readily available in Missouri.

5. Plaintiff Sarasota Wine Market, LLC, d/b/a Magnum Wine and Tastings is a Florida limited liability company that operates a wine retail store in Sarasota, Florida. Magnum Wine and Tastings is located on the mainland in Sarasota, which is a major tourist location. Magnum Wine and Tastings has customers from all over the country, including many from Missouri, who visit while on vacation or have retired to Sarasota. It has developed long-term relationships with customers for whom it makes special purchases. It has received requests that it sell and ship wine to Missouri from customers who have moved to Missouri or who wish to send gifts of wine to Missouri residents, but is unable to do so as a result of the Missouri ban. It intends to sell and ship wines directly to consumers in Missouri if the laws prohibiting such sales and shipments are removed or declared unconstitutional.

6. Heath Cordes is a professional wine consultant, advisor, and merchant who resides in and is a citizen of Florida. He owns and operates Magnum Wine and Tastings in Sarasota.

7. Magnum Wine and Tastings maintains an Internet web site, has previously handled deliveries and shipping of wine that was purchased from its retail stores or ordered through national wine clubs, and intends to do so.

8. Plaintiffs intend to pay all taxes that may be due on such interstate shipments and to comply with all other non-discriminatory state regulations, including obtaining licenses.

DEFENDANTS

9. Defendants are sued in their official capacities.

10. Defendant Michael L. Parson is the Governor of Missouri and is the chief executive officer.

11. Defendant Joshua Hawley is the Attorney General of Missouri and is generally empowered to enforce Missouri laws.

12. Defendant Keith Hendrickson is the Acting Supervisor of the Missouri Division of Alcohol and Tobacco Control, which is charged with enforcing Missouri liquor control laws, including the ones challenged in this lawsuit.

13. Defendants are acting under color of state law when they enforce or supervise the enforcement of the statutes and regulations challenged herein.

Count I: Commerce Clause Violation

14. In the State of Missouri, a resident wine retailer can obtain a license from Defendants which allows it to sell, deliver, and ship by common carrier directly to Missouri consumers any wine that it has in its inventory.

15. A Missouri wine retailer may obtain wine for resale from distributors, auction houses and private collections.

16. The Defendants will issue an off-premises retail license described in the previous paragraphs only to wine retailers located in the State of Missouri.

17. Magnum Wine and Tastings is not located in Missouri, is not eligible for a Missouri off-premises license, and is prohibited by law from selling, delivering or shipping wine from its inventory directly to consumers in Missouri.

18. No other Missouri license is available to Magnum Wine and Tastings that would allow it to sell, deliver, and ship wine from its inventory to consumers in Missouri. It would obtain such a license if one were available.

19. Michael Schlueter is a wine consumer and he wants the opportunity to buy wine directly from Magnum Wine and Tastings and other wine retailers outside of Missouri and to have these wines delivered to his residence.

20. Mr. Schlueter has contacted several out-of-state retailers either on the Internet or by phone in order to buy wines he cannot find in Missouri. These retailers include Magnum Wine and Tastings in Sarasota, The Wine Library in New Jersey, and Federal Wine & Spirits in Boston, Massachusetts. All of these retailers refused to sell and ship their wines to Mr. Schlueter as a result of Missouri's restrictive laws and regulations.

21. Some wines that Mr. Schlueter wants to buy are not available in retail stores in Missouri but are available from retail stores in other states. This includes older vintages no longer generally available except at specialty retailers located outside Missouri, and current vintages that have sold out locally after receiving favorable reviews or because few bottles of limited production wine were allocated to Missouri.

22. Terrence French is a wine consumer and he wants the opportunity to buy wine directly from Magnum Wine and Tastings and other wine retailers outside of Missouri and to have these wines delivered to his residence.

23. Plaintiff French has attempted to purchase wine from out-of-state wine retailers which claims he cannot obtain either in his hometown or in Missouri and has been denied these purchases.

24. Most retailers who carry rare and unusual wine are located in California or New York, and Mr. Schlueter and Mr. French cannot afford the time and expense of traveling to out-of-state retailers to purchase a few bottles of rare wine and personally transport them home.

25. Plaintiffs cannot complete the transactions described in paragraphs 19-23 because the laws of Missouri prohibit direct sales and shipments of wine from out-of-state retailers to in-state consumers and will not issue any kind of license that would allow such transactions.

26. Mangum Wine and Tastings has been contacted by Mr. Schlueter who has attempted to buy wine and have it shipped to him in Missouri. Mangum has refused to complete this order due to Missouri's ban on out-of-state retail sales, shipments, and deliveries. Magnum Wine and Tastings has lost profit of its sale of wine to Mr. Schlueter and other Missouri customers.

27. If Magnum Wine and Tastings were permitted to sell, ship and deliver its wine directly to consumers in the State of Missouri, it would obtain a license if one were available and would comply with the same rules concerning labeling, shipping, reporting, obtaining proof of age, and paying taxes as in-state retailers do.

28. By refusing to issue a license to out-of-state retailers that would allow them to sell, deliver and ship wine upon the same terms as in-state retailers, the State of Missouri is discriminating against interstate commerce and protecting the economic interest of local businesses by shielding them from competition, in violation of the Commerce Clause of the United States Constitution.

Count II: Privileges and Immunities Clause Violation

29. Plaintiffs repeat and re-allege paragraphs 1-23 as if set out fully herein.

30. Heath Cordes is a professional wine consultant, advisor, and merchant who resides in and is a citizen of Florida. He owns and operates Magnum Wine and Tastings in Sarasota.

31. Mr. Cordes develops personal relationships with many of his customers, makes special wine purchases for them, consults with them about wine in person, by telephone and by Internet, and sells and delivers wine to them. Many of his regular customers live part of the year in Florida and part of the year in other states, including Missouri.

32. Mr. Cordes has also received requests from his customers to send wine to residents of Missouri as gifts but was unable to ship the specifically requested wines because the laws of Missouri prevent him from doing so

33. Some wines wanted by Mr. Cordes' customers are difficult to obtain because they are old and only sold at auction, available only in limited allocated amounts or only for a limited time, or scarce because of their popularity.

34. Mr. Cordes wants to practice his profession as a wine merchant in Missouri by consulting with, obtaining wines for, and delivery wines to Missouri residents, but is prevented from doing so by Missouri law.

35. Mr. Cordes is the owner of Magnum Wine and Tastings and has suffered economic harm by not being able to complete sales to Missouri customers.

36. Mr. Cordes has not applied to Missouri officials for a retail license because it would be futile to do so since he is not a resident of Missouri and residency is required for a retail wine dealer permit.

37. If a license were available on terms equivalent to those for Missouri citizens, Mr. Cordes would obtain it. He does not ask for the right to engage in the unlicensed sale of wine in Missouri.

38. Being a professional wine merchant who sells and ships wine to Missouri residents is a lawful activity for citizens of Missouri who may obtain a license to do so.

39. No substantial reason exists for denying citizens of Florida the same privilege to consult about, advise on, obtain, sell, deliver and ship wine to Missouri consumers as is given to citizens of Missouri.

40. Missouri's ban on wine sales and deliveries by out-of-state merchants and its prohibition against issuing licenses to nonresidents, denies Mr. Cordes the privilege to engage in his occupation in the state upon the same terms as Missouri citizens, and therefore violates the Privileges and Immunities Clause in Article IV of the United States Constitution.

Request For Relief

WHEREFORE, Plaintiff seeks the following relief:

A. Judgment declaring Missouri's statutory scheme that prohibits out-of-state retailers from selling, delivering and shipping wine directly to a Missouri consumer, including Rev. Stat. Mo. §§-311.060, unconstitutional as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring Missouri's statutory scheme that prohibits a nonresident from obtaining a license to sell, deliver and ship wine directly to Missouri consumers, including Rev. Stat. Mo. Stat. 311.060 unconstitutional as a violation of the Privileges and Immunities Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those statutes and requiring them to allow out-of-state wine retailers to obtain licenses and to sell, ship, and deliver wine directly to customers in Missouri.

D. Plaintiffs do not request that the State be enjoined from collecting any tax due on the sale of wine.

E. An award of costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

F. Such other relief as the Court deems appropriate to afford Plaintiffs full relief.

Respectfully submitted,

Attorneys for Plaintiffs

/s/ Robert D. Epstein
Robert D. Epstein (Indiana Attorney No. 6726-49)
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
Tel: 317-639-1326
Fax: 317-638-9891
Rdepstein@aol.com

/s/ James A. Tanford

James A. Tanford (Indiana Attorney No. 16982-53)
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
Tel: 812-332-4966
Fax: 317-638-9891
tanfordlegal@gmail.com

/s/ Kristina Swanson

Kristina Swanson (Indiana Attorney No. 34791-29)
EPSTEIN COHEN SEIF & PORTER
50 S. Meridian St., Suite 505
Indianapolis, IN 46204
Tel: 317-639-1326
Fax: 317-638-9891
kristina@kswansonlaw.com

/s/ Alan S. Mandel

Alan S. Mandel (Missouri Attorney No. 29137)
Mandel & Mandel LLP
1108 Olive Street, Fifth Floor
St. Louis, MO 63101
Tel: 877-893-1256
Fax: 314-621-4800
dsmm001@aol.com

4. Motion to Dismiss Plaintiffs' Amended Complaint

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SARASOTA WINE MARKET, LLC,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:17-cv-2792 HEA
)	
MICHAEL L. PARSON, et al.,)	
)	
Defendants.)	

MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Defendants Michael L. Parson, Joshua D. Hawley, and Keith Hendrickson ("Defendants"), by and through undersigned counsel and pursuant to Fed.R.Civ. P. 12(b)(1) and 12(b)(6), hereby move to dismiss Plaintiffs' Complaint. In support of their motion, Defendants state as follows:

1. Plaintiff Michael Schlueter lacks standing to challenge the validity of Missouri's Liquor Control Law.
2. Plaintiff Heath Cordes lacks standing to challenge the validity of Missouri's Liquor Control Law.
3. Plaintiff Terrence French lacks standing to challenge the validity of Missouri's Liquor Control Law.

4. In the alternative to Defendants' argument regarding standing, the provisions of Missouri's Liquor Control Law challenged by Plaintiffs do not violate the Commerce Clause as alleged in Count I.

5. In the alternative to Defendants' argument regarding standing, the provisions of Missouri's Liquor Control Law challenged by Plaintiffs do not violate the Privileges and Immunities Clause as alleged in Count II.

5. In accordance with Local Rule 7-401, Defendants submit contemporaneously herewith, a memorandum in support of this motion.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiff's Complaint with prejudice and grant Defendants such further relief that the Court deems fair and appropriate.

Respectfully submitted,

JOSHUA D. HAWLEY
Attorney General

/s/ Katherine S. Walsh
Katherine S. Walsh, MO37255
Assistant Attorney General
P.O. Box 861
St. Louis, MO 63188
Tel: (314) 340-7861
Fax: (314) 340-7029
katherine.walsh@ago.mo.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of July, 2018, a copy of the foregoing was filed via the Court's electronic filing system and was served by operation of the CM-ECF system on all counsel of record.

/s/ Katherine S. Walsh

5. Opinion, Memorandum and Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SARASOTA WINE MARKET, LLC)	
d/b/a MAGNUM WINE AND)	
TASTINGS, et al.)	CASE NO. 4:17CV2792 HEA
)	
Plaintiffs,)	
)	
v.)	
)	
MICHAEL L. PARSON, et al.)	
)	
Defendants.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint [Doc. No. 37] under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiffs oppose the Motion. The Motion has been fully briefed. For the reasons set forth below, Defendants’ Motion is GRANTED.

Facts and Background

Plaintiffs brought this case pursuant to 42 U.S.C. § 1983, challenging the constitutionality of Missouri’s Liquor Control Law, Chapter 311 RSMo (“Liquor Control Law”).

Like many states, Missouri “funnels liquor sales through a tier system, separating the distribution market into discrete levels.” *Southern Wine and Spirits*

of Am., Inc. v. Division of Alc. & Tobacco Control, 731 F.3d 799, 802 (8th Cir. 2013). The first tier “consists of producers, such as brewers, distillers, and winemakers.” *Id.* The second tier “is comprised of solicitors, who acquire alcohol from producers and sell it ‘to, by or through’ wholesalers.” *Id.* The third tier “is made up of wholesalers, who purchase alcohol from producers and solicitors and sell it to retailers.” *Id.* The fourth tier – and the tier at issue in this case – “consists of retailers, who sell alcohol to consumers.” *Id.* This multi-tiered system for controlling the distribution and sale of alcohol to Missouri residents is permitted by the Twenty-First Amendment to the United States Constitution, which grants states “virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system.” *Id.* (quoting *California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S.97, 110 (1980)).

Missouri implements its multi-tier system through its Liquor Control Law. The Liquor Control Law prohibits “any person, firm, partnership, or corporation” from selling alcoholic beverages in Missouri “without taking a license.” §311.050 RSMo. To obtain a license, an applicant must demonstrate “good moral character” and establish that he/she is “a qualified legal voter and taxpaying citizen of the county, town, city or village” to be served. § 311.060.1 RSMo. These requirements apply to the managing officer of any corporation seeking a license. *Id.*

Defendants previously filed a Motion to Dismiss Plaintiffs' Complaint, which was granted for lack of standing under Rule 12(b)(1). Plaintiffs filed their Amended Complaint, followed by Defendants' filing of the instant Motion to Dismiss.

Plaintiffs' Amended Complaint alleges the following:¹

Plaintiff Michael Schlueter is a Missouri resident who would purchase wine from out-of-state retailers and have it shipped to his Missouri home, if Missouri law permitted him to do so. Plaintiff Terrence French is a Missouri Resident who has been refused sales of wine by out-of-state retailers due to Missouri's Liquor Control Law that bans out-of-state sales, shipments, and delivery of wine from out-of-state sources.

Plaintiff Sarasota Wine Market, LLC d/b/a Magnum Wine and Tastings ("Magnum Wine") is a Florida Limited Liability Company that operates a retail wine store in Sarasota, Florida. Magnum Wine has received requests that it sell and ship wine to Missouri, but is unable to do so legally. It intends to sell and ship wines directly to consumers in Missouri if the laws prohibiting such sales and shipments are removed or declared unconstitutional. Plaintiff Heath Cordes is a citizen of Florida who works as a professional wine consultant, advisor, and merchant. Cordes owns and operates Magnum Wine. Plaintiffs intend to pay all

¹ The recitation of facts is taken from Plaintiffs' Amended Complaint and is set forth for the purposes of the pending motion to dismiss.

taxes due on interstate wine sales and shipments, and comply with all other non-discriminatory state regulations, including obtaining licenses.

Defendants Missouri Governor Michael L. Parson, Missouri Attorney General Eric Schmitt², and Acting Supervisor of the Missouri Department of Public Safety, Division of Alcohol & Tobacco Control Keith Hendrickson are all sued in their official capacities.

In the State of Missouri, a resident wine retailer can obtain a license from Defendants which allows it to sell, deliver, and ship by common carrier directly to Missouri consumers any wine that it has in its inventory. A Missouri wine retailer may obtain wine for resale from distributors, auction houses and private collections. The Defendants will issue such an off-premises retail license only to wine retailers located in the State of Missouri. Magnum Wine is not located in Missouri, is not eligible for a Missouri off-premises license, and is prohibited by law from selling, delivering or shipping wine from its inventory directly to consumers in Missouri. No other Missouri license is available to Magnum Wine and Tastings that would allow it to sell, deliver, and ship wine from its inventory to consumers in Missouri. It would obtain such a license if one were available.

² Effective January 3, 2019, Eric Schmitt is the Attorney General of Missouri. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Eric Schmitt is substituted for former Attorney General Joshua D. Hawley as defendant in this suit.

Plaintiff Schlueter has contacted several out-of-state retailers either on the Internet or by phone in order to buy wines he cannot find in Missouri. These retailers include Magnum Wine, The Wine Library in New Jersey, and Federal Wine & Spirits in Boston, Massachusetts. All of these retailers refused to sell and ship their wines to Schlueter because of Missouri law. Some wines that Schlueter wants to buy are not available in retail stores in Missouri but are available from retail stores in other states. Plaintiff French has also attempted to purchase wine from out-of-state wine retailers which claims he cannot obtain either in his hometown or in Missouri and has been denied these purchases.

Mangum Wine has been contacted by Schlueter who has attempted to buy wine and have it shipped to him in Missouri. Mangum has refused to complete this order due to Missouri's ban on out-of-state retail sales, shipments, and deliveries. Magnum Wine has lost profit of its sale of wine to Schlueter and other Missouri customers. Magnum Wine would obtain a license to sell, ship and deliver its wine directly to consumers in the State of Missouri if one were available.

In the course of his business, Plaintiff Cordes develops personal relationships with many of his customers, makes special wine purchases for them, consults with them about wine in person, by telephone and by Internet, and sells and delivers wine to them. Some of these customers live part of the year in Florida and part of the year in Missouri. Cordes has received requests from his customers

Plaintiff Schlueter has contacted several out-of-state retailers either on the Internet or by phone in order to buy wines he cannot find in Missouri. These retailers include Magnum Wine, The Wine Library in New Jersey, and Federal Wine & Spirits in Boston, Massachusetts. All of these retailers refused to sell and ship their wines to Schlueter because of Missouri law. Some wines that Schlueter wants to buy are not available in retail stores in Missouri but are available from retail stores in other states. Plaintiff French has also attempted to purchase wine from out-of-state wine retailers which claims he cannot obtain either in his hometown or in Missouri and has been denied these purchases.

Magnum Wine has been contacted by Schlueter who has attempted to buy wine and have it shipped to him in Missouri. Magnum has refused to complete this order due to Missouri's ban on out-of-state retail sales, shipments, and deliveries. Magnum Wine has lost profit of its sale of wine to Schlueter and other Missouri customers. Magnum Wine would obtain a license to sell, ship and deliver its wine directly to consumers in the State of Missouri if one were available.

In the course of his business, Plaintiff Cordes develops personal relationships with many of his customers, makes special wine purchases for them, consults with them about wine in person, by telephone and by Internet, and sells and delivers wine to them. Some of these customers live part of the year in Florida and part of the year in Missouri. Cordes has received requests from his customers

to send wine to residents of Missouri as gifts but was unable to ship the specifically requested wines because the laws of Missouri prevent him from doing so. Cordes wants to practice his profession as a wine merchant in Missouri by consulting with, obtaining wines for, and delivering wines to Missouri residents, but is prevented from doing so by Missouri law. He has suffered economic harm as a result. Mr. Cordes has not applied to Missouri officials for a retail license because it would be futile to do so since he is not a resident of Missouri and residency is required for a retail wine dealer permit. If a license were available to Cordes on terms equivalent to those for Missouri citizens, he would obtain it.

Plaintiffs' Complaint alleges that the portions of Missouri's Liquor Control Law that allow in-state retailers to ship wine to Missouri consumers while prohibiting out-of-state retailers from doing the same is unconstitutional for two reasons:

First, Plaintiffs contend that the disparate treatment between in-state and out-of-state retailers violates the Commerce Clause because it discriminates against interstate commerce and protecting the economic interest of local businesses by shielding them from competition.

Second, Plaintiffs claim that the disparate treatment between residents and nonresidents violates the Privileges and Immunities Clause of Article IV of the United States Constitution because Missouri bans wine sales and deliveries by out-

of-state merchants and prohibits the issuance of licenses to nonresidents, thereby denying Cordes the privilege to engage in his occupation in the state upon the same terms as Missouri citizens.

Plaintiffs seek declaratory and injunctive relief in this matter.

Defendants move to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing and Rule (12)(b)(6) for failure to state a claim upon which relief may be granted. For their 12(b)(6) motion, Defendants contend that the constitutional validity of Missouri's multi-tiered approach to regulating liquor distribution and sale has been upheld by the Eighth Circuit Court of Appeals in *Southern Wine*, 731 F.3d 799.

Standard

"[I]f a plaintiff lacks standing, the district court has no subject matter jurisdiction." *Fabisch v. University of Minn.*, 304 F.3d 797, 801 (8th Cir. 2002). Therefore, motions to dismiss for lack of standing fall under the purview of Rule 12(b)(1), which permits a party to move to dismiss a complaint for lack of subject matter jurisdiction. *Id.* "Motions to dismiss for lack of subject-matter jurisdiction can be decided in three ways: at the pleading stage, like a Rule 12(b)(6) motion; on undisputed facts, like a summary judgment motion; and on disputed facts." *Jessie v. Potter*, 516 F.3d 709, 712 (8th Cir. 2008). The parties do not rely on matters outside the pleadings, therefore the Court reviews Defendant's

motion as a “facial attack” on jurisdiction. In a facial attack, “the court restricts itself to the face of the pleadings, and the non-moving party receives the same protections as it would defending against a motion under Rule 12(b)(6).” *Carlsen v. GameStop, Inc.*, 833 F.3d 903, 908 (8th Cir. 2016).

Under Fed.R.Civ.P. 12(b)(6), a party may move to dismiss a claim for “failure to state a claim upon which relief can be granted.” To survive a Rule 12(b)(6) motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A pleading that merely pleads labels and conclusions or a formulaic recitation of the elements of a cause of action, or naked assertions devoid of further factual enhancement will not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A complaint must be liberally construed in the light most favorable to the plaintiff. *Eckert v. Titan Tire Corp.*, 514 F.3d 801, 806 (8th Cir. 2006). Under Rule 12(b)(6), the Court must accept plaintiff’s factual allegations as true and grant all reasonable inferences in the plaintiff’s favor. *Phipps v. FDIC*, 417 F.3d 1006, 1010 (8th Cir. 2005). Where the allegations show on the face of the complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is appropriate. *Benton v. Merrill Lynch & Co.*, 524 F.3d 866, 870 (8th Cir. 2008).

Discussion

A. Standing

“Article III standing is a threshold question in every federal court case.” *United States v. One Lincoln Navigator* 1998, 328 F.3d 1011, 1013 (8th Cir. 2003). The “irreducible constitutional minimum” of standing consists of three elements. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.* The Supreme Court has explained that the injury in fact requirement means showing “an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560 (citations and quotation omitted).

In their Amended Complaint, Plaintiffs adequately plead standing. Schlueter and French each pled that they have tried to order wine for delivery from out-of-state retailers and been denied. They have also pled that they can only obtain their desired wines from out-of-state retailers. “[C]ognizable injury from unconstitutional discrimination against interstate commerce does not stop at members of the class against whom a State ultimately discriminates, and customers of that class may also be injured . . .” *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 286 (1997). As they have pled that the wines they seek are unavailable for

purchase in Missouri, the only way for Schlueter and French to engage in the interstate commerce they seek includes added costs, or imminent economic injury. Schlueter and French have standing to bring their Commerce Clause claim. Magnum Wine has alleged lost profits that resulted from their legal duty to decline orders where the buyer requested wine be shipped to Missouri residents. Magnum Wine has standing to bring this action. Likewise, Cordes has adequately pled that he has lost sales a result of their inability to ship wine directly to Missouri residents. Plaintiffs' Amended Complaint establishes requisite standing to bring the instant case.

B. Failure to State a Claim

Next, Defendants argue that Plaintiffs fail to state a claim upon which relief can be granted. Plaintiffs defend their positions, arguing that, at the very least, the constitutionality of the Liquor Control Law as applied to out-of-state retailers cannot be decided on a Rule 12(b)(6) motion. The Court disagrees, and finds that precedents set by the Supreme Court in *Granholm v. Heald*, 544 U.S. 460 and by the Eighth Circuit in *Southern Wine*, 731 F.3d 799 bar Plaintiffs' claims for relief.

1. Commerce Clause

Defendants argue that the Eighth Circuit "affirmed the validity of Missouri's multi-tier approach to regulating the distribution and sale of alcoholic beverages" in *Southern Wine*, foreclosing Plaintiff's claims. In *Southern Wine*, an out-of-state

wholesaler claimed that Missouri's statute requiring Missouri residency for wholesaler corporations violated the commerce clause and equal protection clause.³ The issue before the Eighth Circuit, then, involved the relationship between the Commerce Clause and the Twenty-first Amendment. The Commerce Clause generally prohibits state laws that "mandate differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Granholm v. Heald*, 544 U.S. 460, 472 (2005) (quoting *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore.*, 511 U.S. 93, 99 (1994)). The Twenty-first Amendment, however, provides that "[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited," U.S. Const. amend. XXI § 2, affording states some "prerogatives particular to the regulation of alcohol," *Southern Wine*, 731 F.3d at 804. In determining the appropriate relationship between the Twenty-first Amendment and the Commerce Clause in *Southern Wine*, the Eighth Circuit relied on the Supreme Court's decision in *Granholm v. Heald*, 544 U.S. 460.

Granholm addressed two state laws that essentially allowed in-state wineries to ship wine directly to in-state residents, but prohibited out-of-state wineries from

³ The district court also rejected the plaintiffs' arguments that the Missouri statute violated the Privileges and Immunities Clause. In doing so, the district court relied on the same legal conclusions reached in its analysis of the Commerce Clause claim. The Privileges and Immunities claim was not addressed on appeal.

doing the same. In holding that the state laws were unconstitutional, the Supreme Court emphasized that the Twenty-first Amendment does not supersede the Commerce Clause. *Id.* at 486. However, *Granholm* also upheld the constitutionality of the states' tiered liquor distribution systems under the Twenty-first Amendment. *Id.* at 488. Therefore, the Supreme Court limited the prohibition on interstate discrimination to the first tier of the liquor distribution system: producers and products. As noted by the Eighth Circuit, the second, narrower tier of wholesalers was specifically mentioned as exempt from *Granholm*'s holding:

The three-tier system is "unquestionably legitimate," *Granholm*, 544 U.S. at 489, 125 S.Ct. 1885 (internal quotation omitted), and that system includes the "licensed in-state wholesaler." *Id.* (quoting *North Dakota*, 495 U.S. at 447, 110 S.Ct. 1986 (Scalia, J., concurring in the judgment)).

Southern Wine, 731 F.3d at 809.

Moreover, the Supreme Court held that "State policies are protected under the Twenty-first Amendment *when they treat liquor produced out of state the same as its domestic equivalent.*" *Granholm*, 544 U.S. at 489 (emphasis added).

Accordingly, *Southern Wine* mandates "state policies that define the structure of the liquor distribution system while giving equal treatment to in-state and out-of-state liquor products and producers . . . are 'protected' against constitutional challenges based on the Commerce Clause." 731 F.3d at 809.

Plaintiffs argue that *Southern Wine* is inapposite, and that dismissal on the pleadings in this case is improper because the Eighth Circuit would have to decide on the facts whether to extend its holding in *Southern Wine* to retailers. However, the Eighth Circuit expressly rejected that argument in *Southern Wine*:

Southern Wine contends that even after *Granholm*, the constitutionality of residency requirements in the wholesale tier depends on a case-specific balancing of interests under the Commerce Clause and the Twenty-first Amendment. Insofar as *Granholm* imported a balancing approach to regulations of the three-tier system, however, it drew a bright line between the producer tier and the rest of the system. The more natural reading of *Granholm* is the Second Circuit's: "Because New York's three-tier system treats in-state and out-of-state liquor the same, and does not discriminate against out-of-state products or producers, we need not analyze the regulation further under Commerce Clause principles." *Arnold's Wines*, 571 F.3d at 191.

731 F.3d at 810. Plaintiffs do not allege and cannot show that the challenged portions of Missouri's Liquor Control Law provide differential treatment to in-state and out-of-state products and producers. Because Plaintiffs' claim concerns only the retailer tier of Missouri's liquor control system, it is foreclosed by the "bright line" between the producer tier and the rest of the system described in *Southern Wine*.

Plaintiffs argue that the Eighth Circuit's statement in *Southern Wine* that "[*Granholm*] drew a bright line between the producer tier and the rest of the system" is merely dictum that was unnecessary to the result in *Southern Wine* and thus should not be treated as binding authority. This argument is not well taken.

In *Southern Wine*, the Eighth Circuit provided a wealth of reasoning that distinguishes discrimination against products and producers from discrimination in the other tiers of the liquor distribution system. *See Id.* at 809-10.

The four-tier system is a legitimate exercise of Missouri's power under the Twenty-first Amendment to "maintain an effective and uniform system for controlling liquor by regulating its transportation, importation, and use," including the ability to "funnel sales through the [multi]-tier system." *Granholm*, 544 U.S. at 484. While the state laws in *Granholm* failed to pass constitutional muster because they discriminatorily allowed only in-state producers to sidestep the tiered regulatory systems, the Missouri statutes in question require that *all* alcohol sold directly to consumers in Missouri by retailers pass through Missouri's four-tier regulatory system "funnel." To allow out-of-state retailers to ship directly to Missouri residents would not only burden in-state retailers, who would have to operate within the four-tier system while out-of-state retailers could circumvent the Missouri regulatory system entirely, it would also violate the Twenty-first Amendment by undermining Missouri's "unquestionably legitimate" system. *Cf. Brooks v. Vassar*, 462 F.3d 341, 352 (4th Cir. 2006) (opinion of Niemeyer, J.) ("[A]n argument that compares the status of an in-state retailer with an out-of-state retailer—or that compares the status of any other in-state entity under the three-tier system with its out-of-state counterpart—is nothing different than an argument

challenging the three-tier system itself.... [T]his argument is foreclosed by the Twenty-first Amendment and the Supreme Court's decision in *Granholm*[.]”).

The challenged statutes do not result in discrimination between in-state and out-of-state producers or products, and they are legitimate exercises of Missouri's authority under the Twenty-first Amendment. Relying on the law of this Circuit, therefore, the Amended Complaint fails to state a Commerce Clause claim upon which relief can be granted.

2. Privileges and Immunities Clause

Plaintiff Cordes is a “professional wine consultant, advisor and merchant” who resides in and is a citizen of Florida. Cordes states that because he is unable to obtain a Missouri retail wine dealer license as a non-Missouri resident, he is prevented from practicing his profession of “consulting with, obtaining wines for, and deliver[ing] wines to Missouri residents.” Cordes claims that the Liquor Control Law thereby violates the United States Constitution's Article IV Privileges and Immunities Clause by “den[ying] Mr. Cordes the privilege to engage in his occupation in the state upon the same terms as Missouri citizens.”

Under the Privileges and Immunities Clause, “[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” U.S. Const., Art. IV, § 2, cl. 1. The Supreme Court has stated that:

The object of the Privileges and Immunities Clause is to strongly constitute the citizens of the United States as one people, by placing

the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. This does not mean, we have cautioned, that state citizenship or residency may never be used by a State to distinguish among persons.

McBurney v. Young, 569 U.S. 221, 226 (2013) (internal citations and quotations omitted). Whether differential treatment of out-of-state residents violates the Privileges and Immunities Clause involves a two-part inquiry: (1) whether the state's law discriminates against out-of-state residents with regard to a privilege or immunity protected by the Clause, and (2) if so, whether sufficient justification exists for the discrimination. *Minnesota ex rel. Hatch v. Hoeven*, 456 F.3d 826, 834 (8th Cir. 2006) (citing *United Bldg. & Constr. Trades Council of Camden County & Vicinity v. Mayor & Council of the City of Camden*, 465 U.S. 208, 218, 221–23 (1984)). Generally, the privilege of engaging in a trade, business or occupation is protected by the Privileges and Immunities Clause. *McBurney*, 569 U.S. at 227. However, the privilege of engaging in the occupation of selling alcohol is not protected by the Privileges and Immunities Clause, due to the Twenty-first Amendment's "broad grant of power to the states . . . to implement [multi]-tier liquor distribution systems which disparately affect non-resident wholesalers and retailers." *Southern Wine*, 2012 WL 1934408, slip op at *5 (W.D.Mo. May 29, 2012), *aff'd*, 731 F.3d 799 (8th Cir. 2013) (citing *Steamers Service Co. v. Wright*, 505 S.W.2d 65, 68 (Mo.1974) ("the liquor business does not

stand upon the same plane, in the eyes of the law, with other commercial occupations ... and is thereby separated or removed from the natural rights, privileges and immunities of the citizen.”)).

Because Cordes’ specific occupation is subject to limitations imposed by the Twenty-first Amendment, his right to pursue it across state lines is not protected by the Privileges and Immunities Clause. Therefore, the court does not reach the “sufficient justification” prong of the two-part inquiry. *Minnesota ex rel. Hatch*, 456 F.3d at 834. Accordingly, the Amended Complaint fails to state a Privileges and Immunities Clause claim.

Conclusion


For the reasons stated above, Plaintiffs’ Amended Complaint fails to state a claim upon which relief could be granted.

Accordingly,

IT IS HERBY ORDERED that the Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint [Doc. No. 37] is **GRANTED**.

A separate Order of Dismissal in accordance with this Opinion, Memorandum and Order is entered this same date.

Dated this 29th day of March, 2019.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

6. Order of Dismissal

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SARASOTA WINE MARKET, LLC
d/b/a MAGNUM WINE AND
TASTINGS, et al.

Plaintiffs,

v.

MICHAEL L. PARSON, et al.

Defendants.


CASE NO. 4:17CV02792 HEA

ORDER OF DISMISSAL

In accordance with the Opinion, Memorandum and Order entered this same date,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this
action is **DISMISSED**.

Dated this 29th day of March 2019.


HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

7. Notice of Appeal

IN THE UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Sarasota Wine Market, LLC,)	
d/b/a Magnum Wine and Tastings,)	
Heath Cordes, Michael Schlueter,)	
and Terrence French)	
<i>Plaintiffs</i>)	Case no. 4:17-cv-02792-HEA
)	
vs)	
)	
Michael L. Parsons, <i>et al.</i>)	
<i>Defendants</i>)	

NOTICE OF APPEAL

Notice is hereby given that all plaintiffs in the above captioned case hereby appeal to the United States Court of Appeals for the Eighth Circuit from the final judgment and order granting the defendants' motion to dismiss the amended complaint entered in this action on the 29th day of March, 2019.

Attorneys for plaintiffs:

s/ James A. Tanford
James A. Tanford
Counsel of record
Epstein Cohen Seif & Porter, LLC
50 S. Meridian St., Ste 505
Indianapolis IN 46204
Tel. 812-332-4966
Fax. 317-638-9891
tanford@indiana.edu

Robert D. Epstein
Epstein Cohen Seif & Porter, LLC
50 S. Meridian St., Ste 505
Indianapolis IN 46204
Tel. 317-639-1326
Fax. 317-638-9891
rdepstein@aol.com

Alan S. Mandel
MANDEL AND MANDEL, LLP
1108 Olive Street, Fifth Floor
St. Louis, MO 63101
314-621-1701
Fax: 314-621-4800
Email: dsmm001@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2019, the foregoing document was filed electronically with the Clerk of the Court and will be served on the attorney for all defendants through the Court's electronic filing system to:

Katherine S. Walsh
Assistant Attorney General
P.O. Box 861
St. Louis, MO 63188
Katherine.Walsh@ago.mo.gov

s/ James A. Tanford
James A. Tanford
Epstein Cohen Seif & Porter, LLC
Attorney for Plaintiffs