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Attorney General of New Jersey, and  
James Graziano, Acting Director of  
the Division of Alcoholic Beverage  
Control

_____	:	Case No.
ROBERT FREEMAN, JUDY FREEMAN,	:	2:19-cv-14716-BRM-SCM
JEAN-PAUL WEG., LLC d/b/a/ THE	:	
WINE CELLARAGE, LARS NEUBOHN,	:	
and PETER BERNSTEIN,	:	<u>Civil Action</u>
Plaintiffs,	:	
v.	:	
	:	
JAMES GRAZIANO, Acting Director	:	<b>ANSWER TO PLAINTIFFS' FIRST</b>
of the New Jersey Division of	:	<b>AMENDED COMPLAINT AND</b>
Alcoholic Beverage Control, and	:	<b>AFFIRMATIVE DEFENSES</b>
GURBIR SINGH GREWAL, Attorney	:	
General of New Jersey,	:	
	:	
Defendants.	:	
_____	:	

Defendants James Graziano, Acting Director of the Division of Alcoholic Beverage Control, and Gurbir Singh Grewal, Attorney General of New Jersey (collectively, "Defendants"), by way of answer to Plaintiffs' First Amended Complaint (the "Amended Complaint"), say:

### **INTRODUCTION**

Defendants admit that Plaintiffs claim that this Amended Complaint has been brought as an action pursuant to 42 U.S.C. § 1983. Defendants deny all other allegations contained herein.

### **JURISDICTION**

1. As to Paragraph 1, Defendants admit that this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) to hear suits alleging violations of United States laws and the U.S. Constitution. Defendants deny that the Amended Complaint alleges facts showing any violations of the U.S. Constitution or any federal law.

2. As to Paragraph 2, Defendants admit that this Court has jurisdiction to grant relief pursuant to 28 U.S.C. §2201 and 2202. Defendants deny that the Amended Complaint alleges facts showing any violations of the U.S. Constitution or any federal law.

### **PLAINTIFFS**

3. As to Paragraph 3, Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiffs Robert and Judy Freeman are residents of Denville, Morris County, New Jersey, are over the age of twenty-one, are legally permitted to purchase, receive, possess and drink wine at their residence, and are winemakers. Defendants have no basis for determining these Plaintiffs' intentions but deny that Plaintiffs cannot obtain wine

they seek to purchase from out-of-state retailers under existing State law. Defendants have no basis for determining the personal habits, thoughts or desires of these Plaintiffs but deny that such habits, thoughts or desires form a predicate for the cause of action alleged.

4. As to Paragraph 4, Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiff Peter Bernstein resides in Wayne, Passaic County, New Jersey and is over the age of twenty-one and legally permitted to purchase, receive, possess and drink wine at his residence. Defendants have no basis for determining this Plaintiff's intentions but deny that he cannot obtain the wine he seeks to purchase from out-of-state retailers under existing State law. Defendants have no basis for determining the personal habits, thoughts or desires of this Plaintiff, but deny that such habits, thoughts or desires form a predicate for the cause of action alleged.

5. As to Paragraph 5, Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiff Jean-Paul Weg, LLC d/b/a The Wine Cellarage, is a New York limited liability company that operates a wine retail store in The Bronx, New York; engages in internet sales; has customers from all over the country, including many from New Jersey; has developed long-term relationships with customers for whom it makes special purchases; and has received requests that it sell, ship, and

deliver wine to New Jersey from customers. Defendants have no basis for determining this Plaintiff's intentions and cannot determine whether its intended method of sale would violate State law. Defendants have no basis for determining the intentions of Plaintiff Jean-Paul Weg, LLC d/b/a The Wine Cellarage, but deny that it cannot obtain a retail license to sell, ship and deliver wines directly to customers in New Jersey under existing State law.

6. As to Paragraph 6, Defendants are without knowledge or information to form a belief regarding these allegations.

7. As to Paragraph 7, Defendants are without knowledge or information to form a belief regarding these allegations.

8. As to Paragraph 8, Defendants have no basis for determining Plaintiffs' intentions, but admits that all sellers of alcoholic beverages in the State of New Jersey are required to conform to its laws, including those relating to the taxation of such goods.

#### **DEFENDANTS**

9. Defendants admit the allegations contained in Paragraph 9.

10. Defendants admit the allegations contained in Paragraph 10.

11. Defendants admit the allegations contained in Paragraph 11.

12. Defendants admit the allegations contained in Paragraph 12.

**ALLEGED COMMERCE CLAUSE VIOLATIONS - COUNT ONE**

13. Defendants admit the allegations contained in Paragraph 13.

14. As to paragraph 14, Defendants lack knowledge or information sufficient to form a belief regarding The Wine Cellarage's location but deny that The Wine Cellarage is not eligible for a New Jersey retail distribution license.

15. Defendants admit the allegations contained in Paragraph 15.

16. Defendants admit the allegations contained in Paragraph 16 to the extent that New Jersey does not have an out-of-state retailer shippers license. There are retail licenses available throughout New Jersey, however, and Plaintiffs may apply for one and ship wine to New Jersey consumers.

17. Defendants deny the allegations contained in Paragraph 17.

18. As to Paragraph 18, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

19. As to Paragraph 19, Defendants are without knowledge or information sufficient to form a belief as to whether these Plaintiffs have contacted several out-of-state wine retailers either on the internet or by phone in order to buy wine.

20. As to Paragraph 20, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

21. As to Paragraph 21, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

22. As to Paragraph 22, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

23. As to Paragraph 23, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

24. Defendants deny the allegations contained in Paragraph 24.

25. As to Paragraph 25, Defendants admit only that New Jersey does not permit out-of-state retailers to direct ship wine to New Jersey consumers, but an out-of-state retailer may apply for a New

Jersey retail distribution license, which will allow it to ship to New Jersey consumers. Defendants are without knowledge or information sufficient to form a belief regarding the remaining allegations in this paragraph.

26. Defendants deny the allegations contained in Paragraph 26.

**ALLEGED PRIVILEGES AND IMMUNITIES CLAUSE VIOLATION - COUNT TWO**

27. As to Paragraph 27, Defendants repeat their responses to Paragraphs 1-26 as if set out fully herein.

28. As to Paragraph 28, Defendants are without knowledge or information sufficient to form a belief regarding these allegations. Defendants note, however, that in Paragraph 6 of the Amended Complaint, Plaintiff Lars Neubohn alleges that he resides in and is a resident of Connecticut, not New York.

29. As to Paragraph 29, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

30. As to Paragraph 30, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

31. As to Paragraph 31, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

32. Defendants deny the allegations contained in Paragraph 32.

33. As to Paragraph 33, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

34. As to Paragraph 34, Defendants are without knowledge or information sufficient to form a belief the truth regarding Plaintiff Lars Neubohn's desire to practice his profession in New Jersey. Defendants deny that Plaintiff Lars Neubohn is prevented from doing so by New Jersey law, rules and regulations.

35. As to Paragraph 35, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.

36. As to Paragraph 36, Defendants admit that Plaintiff Lars Neubohn has not applied to New Jersey officials for a retail alcohol license. Defendants are without knowledge or information sufficient to form a belief regarding the remaining allegations in this paragraph, including, but not limited to, that it would be futile for Plaintiff Lars Neubohn to apply for a retail alcohol license.

37. As to Paragraph 37, Defendants are without knowledge or information sufficient to form a belief regarding these allegations.



38. Defendants admit the allegations in Paragraph 38; however, the privilege to sell wine in New Jersey is equally available to citizens of all States pursuant to a duly New Jersey issued alcohol license.

39. As to Paragraph 39, the allegation is an opinion that requires no response from Defendant.

40. Defendants deny the allegations contained in Paragraph 40.

#### **AFFIRMATIVE DEFENSES**

Defendants claim the following affirmative defenses:

##### **FIRST AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a claim upon which relief can be granted.

##### **SECOND AFFIRMATIVE DEFENSE**

The transportation and importation of alcoholic beverages for delivery and use within the State of New Jersey in violation of the laws of this State is prohibited by the Twenty-First Amendment to the United States Constitution and federal law. The challenged State statutes are constitutional.

**THIRD AFFIRMATIVE DEFENSE**

This court lacks jurisdiction because there is no actual case or controversy before it. Plaintiffs have failed to provide any facts that would show any enforcement action taken against them or any injury as a result of any such enforcement action. This Court lacks jurisdiction to hear a potential action.

**FOURTH AFFIRMATIVE DEFENSE**

Defendants have not violated the constitutional rights of any of the Plaintiffs to this action.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs lack standing.

**SIXTH AFFIRMATIVE DEFENSE**

The relief that Plaintiffs seek is illegal.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' allegations in the Amended Complaint fall outside of the applicable statute of limitations.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims in the Amended Complaint are barred under the doctrine of laches.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims in the Amended Complaint are barred pursuant to collateral estoppel, equitable estoppel and promissory estoppel.

**TENTH AFFIRMATIVE DEFENSE**

New Jersey's rules and regulations regarding the sale of alcoholic beverages in this state are narrowly tailored to advance a legitimate local purpose.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendants retain the right to amend its affirmative defenses at any time in this litigation.

**WHEREFORE,** Defendants demand a dismissal of the Amended Complaint, costs of suit, attorney's fees and other such relief that the court deems equitable and just.

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: */s/ Kimberley M. Wilson*  
Kimberley M. Wilson  
Assistant Attorney General

DATED: November 27, 2019

**STATEMENT OF DAMAGES PURSUANT TO L. CIV. R. 8.1**

Defendants hereby demand from each Plaintiff in the Amended Complaint a Statement of Damages as permitted and in the time allowed by L. Civ. R. 8.1.

By: /s/ Kimberley M. Wilson  
Kimberley M. Wilson  
Assistant Attorney General

Dated: November 27, 2019

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

I hereby certify pursuant to L. Civ. R. 11.2 that to my knowledge, the within matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated at this time. I further certify that to my knowledge, no other party should be joined in the within action at this time.

By: /s/ Kimberley M. Wilson  
Kimberley M. Wilson  
Assistant Attorney General

Dated: November 27, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2019, a copy of the foregoing was served on attorneys for Plaintiffs through the CM/ECF filing system.

By: */s/ Kimberley M. Wilson*

Kimberley M. Wilson  
Assistant Attorney General

Dated: November 27, 2019