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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ROBERT FREEMAN, JUDY FREEMAN,
JEAN-PAUL WEG., LLC d/b/a THE WINE
CELLARAGE, LARS NEUBOHN, and
PETER BERNSTEIN,
Plaintiffs,

Civil Action No.
2:19-cv-14716-BRM-SCM

v.

JAMES GRAZIANO, Acting Director of the
New Jersey Division of Alcohol Beverage
Control, and GURBIR SINGH GREWAL,
Attorney General of New Jersey
Defendants.

FIRST 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 N.J. Stat. §§ 33:1-2(a), 33:1-50, N.J. Admin. Code § 13:2-21.1, and related rules, practices, and regulations as applied to prohibit out-of-state retailer like The Wine Cellarage from taking telephone and internet wine orders from New Jersey consumers, and delivering and shipping that wine directly to their residences in New Jersey from their out-of-

state locations, while at the same time allowing its own retailers to do so. The plaintiffs seek a declaratory judgment that this regulatory scheme is unconstitutional for two reasons: (1) it violates the Commerce Clause because it discriminates against wine retailers located outside New Jersey who are engaged in interstate commerce, and (2) it violates the Privileges and Immunities Clause of Article IV, section 2, because it denies nonresident wine merchants the privilege of engaging in their occupation in New Jersey on terms equivalent to those given to citizens of New Jersey. The plaintiffs seek a permanent injunction barring the defendants from enforcing these laws, practices and regulations, and requiring them to allow out-of-state wine retailers to sell, ship, and deliver wine to New Jersey consumers from their premises located outside the state.

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 Constitution and laws of the United States.

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

PLAINTIFFS

3. Consumer Plaintiffs Robert and Judy Freeman are residents of Denville, Morris County, New Jersey. They are over the age of twenty-one and are legally permitted to purchase, receive, possess and drink wine at their residence. They are wine collectors and consumers of fine wine and would purchase wine from out-of-state wine retailers which would be added to their wine collection, and have those wines shipped to their residence in New Jersey, if New

Jersey laws and regulations permitted them to do so. They are also winemakers.

4. Consumer Plaintiff Peter Bernstein resides in Wayne, Passaic County, New Jersey and is a wine connoisseur. He is over the age of twenty-one and is legally permitted to purchase, receive, possess and drink wine at his residence. He desires to purchase special wines that are difficult to locate in brick-and-mortar retail stores, but offered for sale from a variety of out-of-state sources. He would purchase wine from out-of-state wine retailers and have those wines shipped to his residence in New Jersey, if New Jersey laws and regulations permitted him to do so.

5. 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 and engages in internet sales. It has customers from all over the country, including many from New Jersey. It has developed long-term relationships with customers for whom it makes special purchases. It has received requests that it sell, ship, and deliver wine to New Jersey from customers, but is unable to do so because it is unlawful to do so. It intends to sell, ship, and deliver wines directly to consumers in New Jersey if the rules and regulations prohibiting such sales and shipments are removed or declared unconstitutional.

6. Lars Neubohn is a professional wine consultant, advisor, and merchant who resides in and is a resident of Connecticut. He owns and operates The Wine Cellarage located in The Bronx, New York.

7. The Wine Cellarage maintains an internet web site and has previously handled deliveries and shipping of wine that was purchased from it.

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 for declarative and injunctive relief.

10. Defendant Gurbir Singh Grewal is the Attorney General of New Jersey and is generally empowered to enforce New Jersey laws.

11. Defendant James Graziano is the Acting Director of the New Jersey Division of Alcoholic Beverage Control, which is charged by N.J. Stat. § 33:1-3 with enforcing New Jersey alcoholic beverage 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 New Jersey, a wine retailer physically located in the state may take orders for wine from consumers by telephone or internet, accept payment without the purchaser appearing at the store, and deliver or ship those orders to consumers in the state.

14. The Wine Cellarage is not located in New Jersey and is not eligible for a New Jersey retail distribution license that would allow it to sell, deliver, or ship wine from its premises in New York directly to consumers in New Jersey.

15. Retail distribution licenses in New Jersey are issued only by municipalities and local boards, who are authorized only to issue licenses for retailers whose premises are located in that municipality.

16. No license is available under New Jersey law that would authorize a wine retailer located outside the state to ship wine through interstate commerce to a New Jersey consumer.

17. It is unlawful to ship or transport wine from outside New Jersey into the state without a license.

18. Robert and Judy Freeman are wine consumers and they want the opportunity to buy wine directly from The Wine Cellarage and other wine retailers outside of New Jersey and to have these wines delivered to their residence.

19. They have contacted several out-of-state wine retailers either on the internet or by telephone which engage in interstate wine shipping, and attempted to buy wine for delivery to their residence, but those orders have been refused because New Jersey makes such shipping unlawful.

20. Many wine retailers who carry rare and unusual wine are located in California or New York, and Robert and Judy Freeman cannot afford the time and expense of traveling to out-of-state wine retailers to purchase a few bottles of rare wine and personally transport them home, so they end up buying less desirable wine from local retailers.

21. Peter Bernstein is a wine consumer and he wants the opportunity to buy wine directly from The Wine Cellarage and other wine retailers outside of New Jersey and to have these wines delivered to his residence.

22. Mr. Bernstein has attempted to purchase wine from out-of-state wine retailers, including wine which he could not obtain either in his hometown or from a New Jersey online retailer, and has been denied these purchases.

23. Some wines that Mr. Bernstein wants to buy are not available in retail stores in New Jersey but are available from retail sellers in other states. This includes older vintages no longer generally available except at specialty wine retailers located outside New Jersey, and current

vintages that have sold out locally after receiving favorable reviews or because few bottles of limited production wine were allocated to New Jersey.

24. The plaintiffs cannot complete the transactions described in paragraphs 16-23 because the laws, regulations, and practices of New Jersey prohibit direct sales and shipments of wine from out-of-state wine retailers to in-state consumers and state officials will not issue any kind of license that would allow such transactions.

25. If The Wine Cellarage were permitted to sell, ship, and deliver its wine from its premises in New York directly to consumers in the State of New Jersey, 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 wine retailers do.

26. By refusing to allow out-of-state retailers to take internet and telephone orders, sell, deliver, and ship to New Jersey consumers, while allowing in-state retailers to do so, the State of New Jersey 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

27. Plaintiffs repeat and re-allege paragraphs 1-26 as if set out fully herein.

28. Lars Neubohn is a professional wine consultant, advisor, and merchant who resides in and is a citizen of New York. He owns and operates The Wine Cellarage in New York.

29. Mr. Neubohn 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, arranges wine service for special events like weddings, and sells and delivers wine to

them.

30. Mr. Neubohn has also received requests from his customers to send wine as gifts to residents of New Jersey.

31. Mr. Neubohn has had to decline wine orders for delivery to New Jersey because the laws, practices, and regulations of New Jersey make it unlawful for him to do so.

32. No license is available from New Jersey that would allow him to deliver and ship wine from out of state directly to New Jersey consumers.

33. Mr. Neubohn is able to obtain some wines wanted by his customers that are difficult to obtain from other retail stores or directly from the winery because they are old vintages that must be acquired at auction, are available only in limited allocated amounts or only for a limited time, or scarce because of their popularity.

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

35. Mr. Neubohn is the owner and manager of Jean-Paul Weg, LLC, and has personally suffered economic loss by not being able to complete sales to New Jersey customers.

36. Mr. Neubohn has not applied to New Jersey officials for a retail or other direct-shipping license because it would be futile to do so since he is not a resident of New Jersey and is not requesting to open physical premises in the state, and no direct shipping license is available.

37. If a license were available that allowed him to deliver and ship wine into New Jersey, Mr. Neubohn would obtain it; he does not ask for the right to engage in the unlicensed sale and delivery of wine in New Jersey.

38. Being a professional wine merchant who operates a retail store and sells and ships wine to New Jersey residents is a lawful privilege given to citizens of New Jersey.

39. No substantial reason exists for denying citizens of other states the same privilege to engage in their occupations and sell, ship, and deliver wine to New Jersey consumers as is given to citizens of New Jersey.

40. New Jersey's ban on wine sales and deliveries by out-of-state merchants denies Mr. Neubohn the privilege to engage in his occupation in the state, which privilege is enjoyed by New Jersey 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 provisions in N.J. Stat. §§ 33:1-1(x), 33:1-2(a), 33:1-24, 33:1-28, 33:1-50, N.J. Admin. Code §13:2-21.1, and related laws, practices and regulations, as applied individually and collectively to prohibiting out-of-state wine retailers from selling, shipping, and delivering wine directly to New Jersey consumers from their out-of-state locations, unconstitutional as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring provisions in N.J. Stat. §§ 33:1-1(x), 33:1-2(a), 33:1-24, 33:1-28, 33:1-50, N.J. Admin. Code §13:2-21.1, and related laws, practices and regulations, as applied to prohibiting out-of-state wine merchants from soliciting orders, selling, shipping, and delivering wine directly to New Jersey consumers from their out-of-state locations unconstitutional as a violation of the Privileges and Immunities Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those rules and regulations against

out-of-state wine retailers, and requiring them to allow out-of-state wine retailers to obtain licenses and to sell, ship, and deliver wine directly to customers in New Jersey.

D. Plaintiffs do not request that the State be enjoined from requiring a license or 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.

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*Co-counsel for plaintiffs appearing
pro hac vice*

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Dated: October 24, 2019

CERTIFICATION PURSUANT TO LOCAL CIV. RULE 11.2

I hereby certify pursuant to Local Civil Rule 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.

s/ Michael J. Cohen
Michael J. Cohen

CONSENT BY DEFENDANTS

I certify that I have consulted with attorneys for the defendants and they have consented to the filing of this amended complaint.

s/ James A. Tanford
James A. Tanford

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2019, a copy of the foregoing was served on attorneys for the defendants through the CM/ECF filing system.

s/ Michael J. Cohen
Michael J. Cohen