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13 *Attorneys for Plaintiffs Dwinell, LLC d/b/a Dwinell Country Ales, and North First Industries,*
14 *Inc., d/b/a Varietal Beer Co.,*

15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF IDAHO

17 JANE ROBERTS, an individual;
18 STEFAN YAUCHZEE, an individual;
19 DWINELL, LLC, D/B/A DWINELL
20 COUNTRY ALES, a Washington LLC; and
NORTH FIRST INDUSTRIES, INC., D/B/A
21 VARIETAL BEER CO., a Washington
corporation.

22 Plaintiffs,

23 vs.

24 ROCKY GRIPTON, chief of Idaho alcohol
25 beverage control, RAUL LABRADOR,
26 Attorney General of Idaho,

27 Defendants.
28

Case No. _____

COMPLAINT

1
2 Plaintiffs make the following allegations based upon information and belief, except for the
3 allegations pertaining to Plaintiffs, which are based upon personal knowledge.

4 **INTRODUCTION**

5 This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the
6 constitutionality of Idaho laws, rules and practices that allow small in-state beer producers to self-
7 distribute their products directly to Idaho retailers, bars and restaurants without using a separate
8 wholesaler, but prohibit similarly situated out-of-state beer producers from doing so. The Plaintiffs
9 seek a declaratory judgment that this scheme discriminates against out-of-state beer producers in
10 violation of the dormant Commerce Clause. They seek an injunction prohibiting Idaho state
11 officials from enforcing the ban and requiring them to permit out-of-state beer producers to self-
12 distribute their products to Idaho retailers upon terms equivalent to those given to in-state
13 producers.

14 **JURISDICTION**

15 1. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1331 and
16 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the
17 violation of rights and privileges under the United States Constitution.

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

20 **PLAINTIFFS**

21
22 3. Consumer Plaintiff Jane Roberts is a resident of Pocatello, Idaho. She is over the
23 age of twenty-one and is legally permitted to purchase, receive, possess, and drink beer at her
24 residence. She is a beer collector and desires to purchase special beers that are difficult to locate.
25 As a consumer of fine and artisanal beer, she would like to purchase craft beer from out-of-state
26 beer producers in Washington which would be added to her beer collection and have those beers
27 shipped to her residence in Idaho, but Idaho laws, rules, and practices prohibit the out-of-state beer
28 producers from doing so.

FIRST CAUSE OF ACTION
(Commerce Clause Violation)

10. Plaintiffs repeat and re-allege paragraphs 1-9 as if fully set out herein.

11. Idaho Code § 23-1003(f) authorizes the issuance of a wholesaler license to a brewery located in Idaho producing fewer than 30,000 barrels annually, which allows it to self-distribute its beer to retailers.

12. The wholesaler privileges are given to Idaho brewers at no additional cost.

13. Self-distribution costs a brewery less than distribution through a separate wholesaler and gives the brewer control over the cost to retailers.

14. Self-distribution ensures that an Idaho brewery can distribute its products to retailers state-wide even if it cannot find a wholesaler willing to carry its beer, and without interruptions caused by independent wholesaler decisions about carrying, marketing, and pricing the beer.

15. Some Idaho breweries have obtained this wholesale license and self-distribute their beer to retailers, restaurants, and bars in Idaho.

16. Plaintiff Dwinell is located in the State of Washington and licensed as a brewer by Washington. It produces fewer than 30,000 barrels of beer annually.

17. Dwinell is not eligible for an Idaho wholesale license under I.C. § 23-1003(f) because it does not hold an Idaho brewer's license under § 23-1003(a), a brewer's retail license under § 23-1003(d), or a brewer's pub license under § 23-1003(e).

18. Plaintiff Varietal Beer Co. is located in the State of Washington and licensed as a brewer in Washington. It produces fewer than 30,000 barrels of beer annually.

19. Varietal Beer Co. is not eligible for an Idaho wholesale license under I.C. § 23-1003(f) because it does not hold an Idaho brewer's license under § 23-1003(a), a brewer's retail license under § 23-1003(d), or a brewer's pub license under § 23-1003(e).

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2 20. Dwinell and Varietal Beer Co. are permitted to self-distribute their beer under the
3 laws of the State of Washington.

4 21. The licenses described in paragraphs 19 and 21 are issued only to brewers
5 physically located in Idaho and approved by an Idaho city or county.

6 22. No other Idaho license or permit is available to brewers located outside Washington
7 that would allow them to self-distribute their beer to retailers, restaurants and bars in Idaho without
8 using a separate wholesaler.

9 23. Without a wholesale license, it is unlawful for a brewer to self-distribute its beer to
10 Idaho retailers under I.C. § 23-1055(a), and a person doing so may be charged with a crime under
11 § 23-602. Any criminal conduct on the part of Dwinell and Varietal Beer Co. subjects it to the
12 denial, suspension, revocation or nonrenewal of its Washington license under RCW 66-24-010.

13 24. Wholesalers charge fees to distribute beer, so the use of a separate wholesaler raises
14 the cost of beer to the purchaser and reduces the profit to the brewer.

15 25. Dwinell and Varietal Beer Co. have lost profits because of the ban on direct self-
16 distribution to Idaho retailers.

17 26. Because Idaho brewers can self-distribute their beer to Idaho retailers without
18 incurring the cost of using a separate wholesaler, they have a competitive advantage over similarly
19 situated brewers from other states, including Dwinell and Varietal Beer Co.

20 27. Beer purchased directly from the brewer has economic and business advantages
21 including avoiding the wholesaler cost markup, eliminating the risk that the wholesaler will carry
22 insufficient stock of the beer, facilitating direct communication with the brewery concerning
23 supply issues, and ensuring that the beer will be properly handled and refrigerated between the
24 brewery and the retailer.

25 28. Dwinell and Varietal Beer Co. would distribute their beer directly to Idaho retailers,
26 restaurants, and bars if permitted to do so.
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2 29. Dwinell and Varietal Beer Co. would obtain an Idaho license, submit records, remit
3 Idaho taxes on beer distributed to retailers in the state, and comply with other nondiscriminatory
4 state regulations if required to do so.

5 30. Plaintiffs cannot complete the transactions described in paragraph 28 because Idaho
6 law prohibits them.

7 31. The prohibition against self-distribution by out-of-state beer producers
8 discriminates against out-of-state entities, protects the economic interests of Idaho wholesalers,
9 and shields Idaho brewers from interstate competition in violation of the Commerce Clause of the
10 United States Constitution.

11 32. The prohibition against self-distribution by out-of-state beer producers advances no
12 public health or safety purpose that could not be served by nondiscriminatory alternatives,
13 including monitoring sales at Idaho retailers, and therefore is not protected by the Twenty-first
14 Amendment.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs seek the following relief:

17 A. Judgment declaring that the provisions in I.C. §§ 23-1055(a) and 23-1055(d) that
18 prohibit out-of-state brewers producing fewer than 30,000 barrels of beer annually from selling
19 directly to Idaho retailers are unconstitutional under the Commerce Clause.

20 B. Judgment declaring that the provisions in I.C. §§ 23-1003(d) and 23-1003(e) that limit
21 the issuance of brewer's retail and brewer's pub licenses to breweries located in the state of Idaho
22 are unconstitutional under the Commerce Clause.

23 C. An injunction prohibiting defendants from enforcing those laws against out-of-state
24 brewers and requiring them to allow out-of-state brewers to self-distribute their products to Idaho
25 retailers, restaurants, and bars upon terms equivalent to those imposed on in-state brewers.
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2 D. Plaintiffs do not request that the defendants be enjoined from requiring out-of-state
3 brewers to obtain the same no-cost wholesale license it requires for in-state brewers or comply
4 with the same 30,000 barrel production limit it imposes on in-state brewers.

5 E. Plaintiffs do not request that the State of Idaho be enjoined from collecting any taxes
6 due on beer sold directly from a brewer to a retailer.

7 F. An award of attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988.

8 G. Such other relief as the Court deems appropriate.

9 DATED this 4th day of August, 2023.

10 RACINE OLSON, PLLP

11
12 By: /s/ Heidi Buck Morrison
13 HEIDI BUCK MORRISON
14

15
16
17 DATED this 4th day of August, 2023.

18 EPSTEIN SEIF PORTER & BEUTEL

19
20
21 By: /s/ Robert D. Epstein
22 ROBERT D. EPSTEIN

23 DATED this 4th day of August, 2023.

24 EPSTEIN SEIF PORTER & BEUTEL

25
26 By: /s/ James A. Tanford
27 JAMES A. TANFORD
28

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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on *(date)* _____ , and mailed a copy to the individual's last known address; or

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_____ on *(date)* _____ ; or

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Other *(specify)*: _____ .

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Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jane Roberts, Stefan Yauchzee, Dwinell LLC, North First Industries.

(b) County of Residence of First Listed Plaintiff Bannock (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Heidi Buck Morrison, Racine Olson, PLLP, 201 E. Center St., Pocatello, ID 83201, 208-232-6101

DEFENDANTS

Rocky Gripton, Raul Labrador

County of Residence of First Listed Defendant Ada (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983

Brief description of cause: Constitutional challenge to Idaho Code 23-1055(a) and (d) and Idaho Code 23-1003(d) and (e); request for injunctive relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/04/2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Heidi Buck Morrison

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.