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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION**

19 DWINELL, LLC, a Washington limited
20 liability corporation; BUCKEL
21 FAMILY WINE LLC

22 Plaintiffs,

23 v.

24 JOSEPH McCULLOUGH, DIRECTOR
25 OF CALIFORNIA DEPARTMENT OF
26 BEVERAGE CONTROL; ROB
27 BONTA, ATTORNEY GENERAL OF
THE STATE OF CALIFORNIA,

28 Defendants.

Case No. 2:23-CV-10029

**COMPLAINT FOR VIOLATIONS
OF 42 U.S.C. § 1983**

(COMMERCE CLAUSE)

JURY TRIAL DEMANDED

1 Plaintiffs DWINELL, LLC and BUCKEL FAMILY WINE LLC allege as
2 follows:

3 **INTRODUCTION**

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5 1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983
6 challenging the constitutionality of one feature of California’s alcoholic beverage
7 regulatory system that discriminates against interstate commerce. California
8 prohibits out-of-state wineries from self-distributing their wine directly to California
9 retailers while allowing in-state wineries to do so. Only those wineries with facilities
10 located within the state can distribute their wine directly to retailers without going
11 through a separate wholesaler. This difference in treatment between in-state and out-
12 of-state businesses violates the Commerce Clause because it discriminates against
13 out-of-state wineries and protects the economic interests of in-state wineries and
14 wholesalers. This different treatment is not justified by the Twenty-first Amendment
15 because it is not reasonably necessary to protect public health and safety. Plaintiffs
16 seek a declaratory judgment that California’s laws and practices that prohibit out-of-
17 state wineries from engaging in the same self-distribution activities as in-state
18 wineries is unconstitutional and a permanent injunction barring the defendants from
19 enforcing it.

20 **JURISDICTION AND VENUE**

21 2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331
22 and 1343(a)(3), which confer original jurisdiction on federal district courts to hear
23 suits alleging the violation of rights and privileges under the United States
24 Constitution and laws.

25 3. The Court is also empowered to grant declaratory relief and related
26 relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
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28

1 12. Defendants interpret and apply Cal. Bus. & Prof. Code §§ 23013 &
2 23358 as requiring a winery to have facilities and winemaking equipment in
3 California in order to qualify for Winegrower license.

4 13. A Winegrower license authorizes the winery to sell its wine directly to
5 any California retailer holding a license authorizing it to sell wine to consumers.

6 14. California retailers authorized to sell wine to consumers include retail
7 stores, restaurants, bars, taverns, private clubs and a variety of specialty vendors.

8 15. A licensed Winegrower located in California is not required to use a
9 wholesaler to distribute its wine to California retailers.

10 16. Some California wineries have exercised this self-distribution privilege
11 to sell their wine to retailers without going through a separate wholesaler.

12 17. Plaintiff Dwinell is located in the State of Washington and it has no
13 physical facilities or warehouse in California.

14 18. Plaintiff Buckel Family Wine LLC is located in Gunnison, Colorado
15 and it has no physical facilities or warehouse in California.

16 19. Defendants will not issue a Winegrower license to an out-of-state
17 winery that has no physical facilities in the state.

18 20. Without a license, it is unlawful for Plaintiffs Dwinell and Buckel and
19 other out-of-state wineries to sell their products directly to California retailers.

20 21. An out-of-state winery must use a separate California importer-
21 wholesaler to distribute its wine to California retailers.

22 22. The use of a separate importer-wholesaler adds to the cost of the wine.

23 22. A non-California winery must either discount the price to the importer-
24 wholesaler or pass on the added cost to the California retail purchaser.

25 23. Discounting the price to the importer-wholesaler reduces the out-of-
26 state winery's profits.

27 24. Passing on the added costs raises the final price to the consumer and
28 makes the wine less competitive.

1 25. Direct self-distribution gives the winery greater control over the cost
2 and delivery schedule to retailers.

3 26. Direct self-distribution gives a winery the opportunity to sell its wines
4 to California retailers even if it cannot find a wholesaler willing to carry its
5 products.

6 27. California is the largest market for wine in the United States.

7 28. Los Angeles county has the second largest population in the United
8 States.

9 29. Most wine is purchased by consumers in person at retailers.

10 30. Many consumers include the price of wine among the factors that
11 influence what wine they buy.

12 31. A winery that can self-distribute its wine to California retailers without
13 the added cost of using a wholesaler has a competitive advantage.

14 32. Plaintiffs want the opportunity to sell their wines directly to California
15 retailers in Los Angeles and other areas of California in order to fairly compete in
16 the market.

17 33. Plaintiffs have no business reason to establish physical premises in
18 California and cannot afford to create additional facilities in California merely to
19 comply with the physical-presence requirement to obtain a Winegrower license. The
20 cost of building and maintaining a second location would add to the cost of its wine
21 compared to distributing it from Washington, which would make it less competitive.

22 34. The wine Plaintiffs produce is subject to regulation, inspection and
23 approval by Washington state officials and the federal Tax and Trade Bureau.

24 35. A physical presence requirement as a prerequisite to selling wine in the
25 state is unconstitutional under *Granholm v. Heald*, 544 U.S. 460 (2005).

26 36. A residency requirement as a prerequisite to obtaining a Winegrower
27 license is unconstitutional under *Tennessee Wine Retailers Assoc. v. Thomas*, 588
28 U.S. ___, 139 S.Ct. 2449 (2019).

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- c. Plaintiffs do not request that state officials be enjoined from collecting any tax due on the sale of wine.
- d. An award of costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
- e. An order granting all other legal, equitable, injunctive and declaratory relief that the Court finds appropriate.

Dated: November 27, 2023,

Respectfully Submitted,

NELSON & FRAENKEL, LLP
EPSTEIN SEIF PORTER & BEUTEL

/s/ Gretchen M. Nelson
Gretchen M. Nelson
Attorneys for Plaintiffs

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on any claim so triable.

Dated: November 27, 2023

Respectfully Submitted,

NELSON & FRAENKEL, LLP
EPSTEIN SEIF PORTER & BEUTEL

/s/ Gretchen M. Nelson
Gretchen M. Nelson
Attorneys for Plaintiffs