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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Thewinetobuy.com, LLC; Mitchell
Soffer; Reed Day, and Albert Jacobs,

Plaintiffs,

vs.

John Cocca, Director, Arizona
Department of Liquor Licenses and
Control; Troy Campbell, Chair, Arizona
State Liquor Board; and Mark Brnovich,
Attorney General of Arizona, in their
official capacities,

Defendants.

Case No.:

COMPLAINT

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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 several interconnected laws and regulations of Arizona which collectively prohibit out-of-state retailers from selling wine online and shipping it to consumers. Arizona allows only in-state retailers operated by Arizona residents to do so. This prohibition therefore violates the Commerce Clause because it discriminates against out-of-state retailers, protects the economic interests of in-state retailers, and denies consumers access to wine sold in other states but unavailable in Arizona. It is not justified by the Twenty-first Amendment because the state’s regulatory interests could be advanced by nondiscriminatory alternatives. The plaintiffs seek a declaratory judgment that this discriminatory ban on shipping by out-of-state wine retailers is unconstitutional and a permanent injunction barring the defendants from enforcing the laws and regulations that directly or indirectly prohibit out-of-state retailers from selling and shipping wine to Arizona 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 United States Constitution and laws.

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6. Mitchell Soffer resides in and is a citizen of Florida. He owns and operates Thewinetobuy.com, LLC. He would obtain an Arizona license and remit taxes if required, and would comply with other nondiscriminatory Arizona laws regulating online sales and shipping. He would prefer selling, shipping, and delivering to Arizona consumers, but would tender Arizona sales tax. As a Florida retailer, it would abide by a direct shipper's permit if one was available. It is not the intention of the retail Plaintiff to obtain a physical presence in the State of Arizona, but rather to take orders online or over the phone and ship and deliver its wine to Arizona consumers.

DEFENDANTS

7. Defendants are sued in their official capacities.

8. John Cocca is the Director of the Arizona Department of Liquor Licenses and Control. He is charged by Ariz. Rev. Stat. § 4-112(B) with administering, investigating and enforcing the provisions of the Arizona alcoholic beverage laws, including those challenged in this complaint.

9. Troy Campbell is Chair of the Arizona State Liquor Board. He is charged by Ariz. Rev. Stat. § 4-112(A) with granting and denying liquor license applications and adopting rules to carry out the provisions of the Arizona alcoholic beverage laws, including those challenged in this complaint.

10. Mark Brnovich is the Attorney General of Arizona. He is charged by Ariz. Rev. Stat. § 41-193 with defending the constitutionality of the laws of Arizona. He is authorized by 27 U.S.C. § 122a to bring enforcement actions in federal court against any person engaged in interstate transportation of intoxicating liquor in violation of state law.

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17. Some wine retailers located outside of Arizona have wines for sale that Plaintiffs Day and Jacobs want to buy and which are not available at Arizona retailers in their areas, including rare, unusual, older vintage, or other limited-supply wines, wines not stocked by Arizona wholesalers, and wine originally distributed in Arizona but no longer available because the wholesalers have depleted their supply.

18. Plaintiffs Day and Jacobs 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 are effectively prohibited from buying unique wines for sale in other states.

19. Some wine retailers located outside of Arizona have wines for sale at prices lower than consumers can find at Arizona retailers. Because Arizona prohibits out-of-state retailers from selling and shipping wine directly to consumers, consumers including Day and Jacobs are forced to pay higher prices.

20. Thewinetobuy.com, LLC has received requests through its website, or made in person at its Florida premises, to sell and ship wine to Arizona residents, but has been unable to do so directly because Arizona law prohibits such transactions.

21. The Plaintiffs cannot complete the commercial transactions described in paragraphs 14-21 because the laws and regulations of Arizona prohibit direct sales and shipments of wine from retailers located outside Arizona to in-state consumers, and state officials will not issue any kind of license that would allow such interstate transactions.

22. A wine retailer located in Arizona and operated by an Arizona resident is authorized by Ariz. Rev. Stat. § 4-203(J) to take orders by telephone and through the

1 internet for the sale of wine, and may deliver it to consumers at their residences in
2 Arizona using a common carrier. 4-203(J).
3

4 23. Thewinetobuy.com, LLC is located in Florida and operated by a Florida
5 resident, and is prohibited from selling wine to Arizona residents by telephone or
6 internet and shipping it to them by common carrier because of the following laws:
7

- 8 a. Ariz. Rev. Stat. § 4-203.04(H)(1) provides that a person who knowingly
9 sells and ships wine directly to a purchaser in Arizona is guilty of a class
10 2 misdemeanor if the person does not possess a current direct shipment
11 license. Ariz. Rev. Stat. § 4-203.04(A) authorizes direct shipment licenses
12 for out-of-state wineries only, not for out-of-state retailers. 4-203.04(A).
13
- 14 b. Ariz. Rev. Stat. § 4-243.01(B) provides that all wine shipped into this
15 state from outside the state of Arizona must be delivered to an Arizona
16 wholesaler and remain at the wholesaler's premises for at least twenty-
17 four hours before it can be delivered to any other person, and cannot be
18 shipped directly to a consumer.
19
- 20 c. Ariz. Rev. Stat. § 4-244(1) makes it unlawful for any person to sell or
21 ship wine without obtaining a license and Ariz. Rev. Stat. § 4-202(A) and
22 Ariz. Admin Code R19-1-201 require individual license applicants to be
23 bona fide residents of Arizona, and Mitchell Soffer is a resident of
24 Florida.
25
- 26 d. Ariz. Rev. Stat. § 4-244(1) makes it unlawful for any person to sell or
27 ship wine without obtaining a license and Ariz. Rev. Stat. § 4-202(A) and
28 Ariz. Admin Code R19-2-201(E) require LLC applicants to be organized

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under the laws of Arizona, and Thewinetobuy.com, LLC is organized under the laws of Florida.

- e. Ariz. Rev. Stat. § 4-244(1) makes it unlawful for any person to sell or ship wine without obtaining a license and Ariz. Rev. Stat. § 4-202(A) requires that a license issued to an out-of-state LLC must be held by an individual who is a bona fide resident of Arizona, and no member, employee or agent of Thewinetobuy.com, LLC is an Arizona resident.
 - f. Ariz. Rev. Stat. § 4-244(1) makes it unlawful for any person to sell or ship wine without obtaining a license and Ariz. Rev. Stat. § 4-201(A)-(D) makes retail licenses available only for premises located in Arizona, and the premises of Thewinetobuy.com, LLC are in Florida.
 - g. Ariz. Rev. Stat. § 4-244(1) makes it unlawful for any person to sell or ship wine without obtaining a license and Ariz. Rev. Stat. § 4-202(A) requires that licenses issued to an out-of-state LLC must be held by an Arizona resident, and no member, employee or agent of Thewinetobuy.com, LLC is an Arizona resident.
 - h. Ariz. Rev. Stat. § 4-250.01(A) requires an unlicensed out-of-state retailer selling wine to Arizona consumers to comply with Arizona liquor laws as if it were licensed by the state, which includes the requirement in Ariz. Rev. Stat. § 4-243.01(A)(3) that retailers must buy their wine only from Arizona wholesalers, and Thewinetobuy.com, LLC obtains its wine from Florida wholesalers and cannot buy wine from Arizona wholesalers.
24. In order to qualify for a license to sell and ship wine at retail to consumers in Arizona, Thewinetobuy.com, LLC would have to comply with the requirements in

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1 Ariz. Rev. Stat. §§ 4-201(A)-(D) and 4-202(A) that it must establish physical
2 premises in the state and hire an Arizona resident to manage it.
3

4 25. Thewinetobuy.com, LLC has no business reasons to establish physical
5 premises in Arizona, and cannot afford to create a second store and staff it with one or
6 more Arizona residents because the cost of maintaining a second retail store would
7 add to the retail price of its wine compared to shipping it from Florida and would
8 make it less competitive than wine sold and shipped from a retailer located in
9 Arizona.
10

11 26. Even if it established a second physical store in Arizona,
12 Thewinetobuy.com, LLC could not ship its wine from its Florida store to its Arizona
13 store for delivery to Arizona residents because Ariz. Rev. Stat. § 4-243.01(B) requires
14 that all wine shipped into this state from outside must be delivered to an Arizona
15 wholesaler and remain there for at least twenty-four hours before it can be delivered
16 to retail premises, and Ariz. Rev. Stat. § 4-243.01(A)(2) prohibits a wholesaler from
17 receiving wine from a retailer.
18

19 27. If Thewinetobuy.com, LLC, were permitted to sell and ship wine to
20 Arizona consumers from its premises in Florida, it would obtain a permit if one
21 existed, would comply with public safety regulations including those concerning
22 labeling, shipping, reporting and obtaining proof of age, and would remit the same
23 taxes as in-state wine retailers do.
24

25 28. By imposing a residency requirement upon applicants for retail licenses
26 and prohibiting directly and indirectly sales and shipments of wine to Arizona
27 consumers from retail premises located outside the state, while allowing such sales
28 and shipments from wine retailers physically located in the state, Arizona is

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1 discriminating against interstate commerce, protecting the economic interest of local
2 businesses by shielding them from competition, and depriving plaintiffs of their
3 access to the markets of other states upon equal terms, in violation of the Commerce
4 Clause of the United States Constitution.
5

6 29. The laws prohibiting direct sales and shipping by out-of-state wine
7 retailers are not justified by the Twenty-first Amendment because the prohibition does
8 not advance a state interest which could not be served by reasonable
9 nondiscriminatory alternatives.
10

11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiffs seek the following relief:

13 A. Judgment declaring that the provisions set forth in paragraph 24 which
14 have the effect of prohibiting out-of-state retailers from selling wine online and
15 shipping it to Arizona consumers, are unconstitutional under the Commerce Clause
16 and not saved by the Twenty-first Amendment.
17

18 B. An injunction prohibiting defendants from enforcing those laws and
19 regulations, directly or indirectly, individually or collectively, so as to prohibit
20 Thewinetobuy.com, LLC and other retailers whose premises are located outside the
21 state of Arizona, from selling and shipping wine directly to consumers in Arizona.
22

23 C. Plaintiffs do not request that the defendants be enjoined from establishing
24 a licensing system under which out-of-state wine retailers could sell and ship to
25 Arizona consumers.
26

27 D. Plaintiffs seek no remedy for any product other than wine.

28 E. Plaintiffs do not request that state officials be enjoined from collecting
any tax due on the sale of wine.

1 F. An award of costs and expenses, including reasonable attorneys' fees
2 pursuant to 42 U.S.C. § 1988.
3

4 G. For such other and further relief as the Court deems appropriate to afford
5 Plaintiffs full relief and enforce the Court's order.
6

7 RESPECTFULLY SUBMITTED this 30th day of July, 2021.
8

9 /s/Christopher J. Zachar
10 Christopher J. Zachar, Esq.
11 Attorney for the Plaintiffs
12

13 /s/Joseph Beutel
14 Joseph Beutel, Esq.
15 Attorney for the Plaintiffs
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17 /s/Robert D. Epstein
18 Robert D. Epstein, Esq.
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21 /s/James A. Tanford
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25 /s/James Porter
26 James Porter, Esq.
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