

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANHEUSER-BUSCH, INC., WHOLESALER)	
EQUITY DEVELOPMENT CORPORATION,)	
CITY BEVERAGE – ILLINOIS, L.L.C., CITY)	Case No. __ C __
BEVERAGE L.L.C., CITY BEVERAGE –)	
MARKHAM L.L.C., CHICAGO DISTRIBUTING)	
L.L.C., SD OF ILLINOIS, INC., And DOUBLE)	Judge
EAGLE DISTRIBUTING COMPANY)	
Plaintiffs,)	Magistrate Judge
v.)	
STEPHEN B. SCHNORF, JOHN M. AGUILAR,)	
DANIEL J. DOWNES, SAM ESTEBAN,)	
MICHAEL F. MCMAHON, MARTIN)	
MULCAHEY, DONALD O'CONNELL,)	
Commissioners, of the Illinois Liquor Control)	
Commission, in their official capacities; RICHARD)	
R. HAYMAKER, Chief Legal Counsel of the)	
Illinois Liquor Control Commission, in his official)	
capacity; And THE ILLINOIS LIQUOR)	
CONTROL COMMISSION)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs Anheuser-Busch, Inc. (“AB Inc.”), Wholesaler Equity Development Corporation (“WEDCO”), CITY Beverage – Illinois L.L.C. (“CITY Beverage”), CITY Beverage L.L.C. d/b/a CITY Beverage – Bloomington (“CITY Bloomington”), Chicago Distributing L.L.C. d/b/a CITY Beverage – Chicago (“CITY Chicago”), and CITY Beverage – Markham L.L.C. d/b/a CITY Beverage – Arlington Heights (“CITY Markham”) (CITY Beverage, CITY Bloomington, CITY Chicago, and CITY Markham, collectively the “CITY Entities,”), SD of Illinois, Inc. (“SDI”) and Double Eagle Distributing Company (“Double Eagle”) (SDI and

Double Eagle, collectively the “Soave Entities,” and together with the CITY Entities, WEDCO and AB Inc., “Plaintiffs”), bring this action against the Illinois Liquor Control Commission (the “ILCC”); Stephen B. Schnorf (“Schnorf”), John M. Aguilar (“Aguilar”), Daniel J. Downes (“Downes”), Sam Esteban (“Esteban”), Michael F. McMahon (“McMahon”), Martin Mulcahey (“Mulcahey”), and Donald O’Connell (“O’Connell”), in their official capacities as Commissioners of the ILCC; and Richard R. Haymaker (“Haymaker”) in his official capacity as Chief Legal Counsel of the ILCC; (collectively, “Defendants”), pursuant to 42 U.S.C. § 1983, for violations of, and deprivation of Plaintiffs’ rights under, the Commerce, Due Process, and Contracts Clauses of the United States Constitution, and allege the following:

NATURE OF THE ACTION

1. This action is based on Defendants’ attempt to unconstitutionally grant preferential treatment to in-state alcoholic beverage producers over out-of-state producers. In this action, Plaintiffs seek declaratory and injunctive relief to remedy the irreparable and substantial harm that will continue to result from Defendants’ violation of the Commerce and Contracts Clauses of the United States Constitution and the Fourteenth Amendment’s procedural due process protections.

2. Defendants have erected protectionist and discriminatory barriers to out-of-state beer producers by enforcing the Illinois Liquor Control Act of 1934 (the ‘Liquor Control Act’) to permit in-state beer producers to distribute beer directly to retailers, while prohibiting out-of-state beer producers from doing the same. Thus, Defendants have deprived AB Inc. and its affiliates of the opportunity to compete on equal footing with the in-state beer producers who

are permitted to distribute beer to retailers. This violates Plaintiffs' constitutional rights under the Commerce Clause.

3. Moreover, Defendants' actions threaten to scuttle a unique and important acquisition by WEDCO of the remaining 70 percent of CITY Beverage. Prior to Defendants' unconstitutional actions, WEDCO and CITY Beverage's majority owners had agreed to this transaction. The parties now face a State-decreed prohibition to closing this sale. Unless Plaintiffs receive immediate injunctive and declaratory relief, the prospect of WEDCO purchasing the remaining 70 percent ownership of CITY Beverage could vanish, which would cause extreme economic harm to Plaintiffs.

SUBJECT MATTER JURISDICTION

4. The claims asserted herein arise under and pursuant to 42 U.S.C. § 1983 and the United States Constitution.

5. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 1343(a).

VENUE

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Many of the acts and events that give rise to the claims asserted and described herein occurred in substantial part in this District.

7. Many of the discussions and meetings with Defendant Haymaker and other members of the ILCC staff that give rise to the claims asserted and described herein occurred in substantial part in this District.

8. On March 2, 2010, the ILCC held a Special Session at 160 N. LaSalle Street, Chicago, Illinois, located in this District, at which the parties discussed the events that give rise to the claims asserted and described herein.

9. On March 10, 2010, the ILCC met in this District to consider how to enforce the Liquor Control Act in relation to Plaintiffs and issued the order described herein denying Plaintiffs' their constitutional rights under the Commerce, Due Process, and Contracts Clauses.

10. The CITY Entities conduct a substantial part of their operations in this District and these operations are severely affected by the acts and events that give rise to the claims asserted and described herein.

THE PARTIES

11. AB Inc. is a wholly owned subsidiary of Anheuser-Busch Companies, Inc. AB Inc. is the leading U.S. brewer and producer of beer in the United States, brewing, among others, the Budweiser and Bud Light brand beers, which are the two best-selling beers in the world. AB Inc. produces over 100 beers, flavored alcoholic beverages, and nonalcohol brews, and imports other beers for distribution in the United States. AB Inc.'s Budweiser, Bud Light, Michelob ULTRA, Busch, and Natural Light brand beers hold the No. 1 positions in their respective U.S. market segments. AB Inc. operates twelve breweries in the United States in twelve States and distributes products through a network of nearly 600 independent wholesalers and operates 11 company-owned distributors in eight states.

12. Plaintiff WEDCO is a wholly-owned subsidiary of Anheuser-Busch Companies, Inc. and thus is an affiliate of AB Inc. WEDCO, formerly known as AB Investment

Capital Corp., has maintained since 2005, and currently does maintain, a 30 percent ownership interest in CITY Beverage.

13. CITY Beverage is the parent company of CITY Bloomington, CITY Chicago, and CITY Markham, which hold, in various names, multiple Illinois Distributor's and Importing Distributor's Licenses.

14. SDI and Double Eagle each own 35 percent of CITY Beverage.

15. Defendant ILCC was created pursuant to Article III of the Liquor Control Act. The ILCC has deprived Plaintiffs of their rights under the United States Constitution.

16. Defendant Schnorf, the Acting Chair and a Commissioner of the ILCC, and Defendants Aguilar, Downes, Esteban, McMahon, Mulcahey, and O'Connell, who are Commissioners of the ILCC, all are named in this action in their official capacities. The actions of Schnorf, Aguilar, Downes, Esteban, McMahon, Mulcahey, and O'Connell in their official capacities have deprived Plaintiffs of their rights under the United States Constitution.

17. Defendant Richard R. Haymaker is Chief Legal Counsel of the ILCC and is named in this action in his official capacity. Haymaker's actions in his official capacity have deprived Plaintiffs of their rights under the United States Constitution.

18. Defendants engaged in the conduct set forth in this Complaint in the course and scope of their official duties as members, officers, and/or employees of the ILCC. At all times material to this Complaint, Defendants were acting under color of Illinois law, ordinance, regulation, custom and/or usage.

The Illinois Liquor Control Act

19. The Liquor Control Act regulates the manufacturing, distribution, and retail sale of alcoholic beverages. The Liquor Control Act sets up various classes of licenses which must be obtained from the ILCC in order to perform virtually any function in Illinois with respect to the alcohol beverage industry. Illinois' system is commonly described as a "three-tier" system, even though no such definition or categorization is provided in the statute itself.

20. For example, separate licenses are needed to manufacture beer in Illinois or manufacture beer outside of Illinois and import it into Illinois; to distribute beer in Illinois; or to make retail sales of beer in Illinois.

21. Beginning prior to 1982 and through the present, the Liquor Control Act has defined a Brewer as "a person who is engaged in the manufacture of beer." 235 ILCS 5/1-3.09(a). Under the Illinois Class 3 Brewer's licensing category ("Brewer's License"), "[a] Brewer may make sales and deliveries of beer . . . to retailers provided the brewer obtains an importing distributor's or distributor's license in accordance with the provisions of this Act." 235 ILCS 5/5-1(a).

22. In 1982, the Illinois General Assembly amended the Liquor Control Act to create a Non-Resident Dealer's ("NRD") License category. An NRD means "any person, firm, partnership, corporation or other legal business entity who or which exports into this State, from any point outside of this State, any alcoholic liquors for sale to Illinois licensed foreign importers or importing distributors." 235 ILCS 5/1-3.29. The NRD License is restricted to "the actual manufacturer of such alcoholic liquors or the primary United States importer of such alcoholic

liquors, if manufactured outside of the United States, or the duly registered agent of such manufacturer or importer.” *Id.*

23. Senator Harmon, when introducing an amendment in connection with the NRD license category stated that “[a]s you know, in—in our three tier system—brewers are subjected to certain requirements. As a practical matter . . . non-resident dealers are considered brewers. This [amendment being introduced] would make a clarifying amendment to the Fair Dealing Act to ensure that . . . non-resident dealers are treated the same as brewers.” *Illinois Liquor Control Act: Hearing on S.B. 2754 Before the Gen. Assembly*, 95th Gen. Assemb., Reg. Sess. 41 (Ill. 2008) (statement of Sen. Don Harmon.)

24. Since 1982, therefore, in-state brewers have obtained Brewer’s Licenses and out-of-state Brewers have obtained NRD Licenses. The Brewer’s License permits in-state Brewers to brew beer in Illinois *and* distribute beer to retailers in Illinois. The NRD license permits out-of-state Brewers to sell beer to wholesalers in Illinois. According to the ILCC, under the Liquor Control Act, out-of-state brewers, like AB Inc., are not eligible for a Brewer’s License. Rather, out-of-state Brewers can obtain the NRD license to export beer to Illinois.

25. Pursuant to the Liquor Control Act, to distribute beer in Illinois, it is necessary to hold either a Distributor’s License or an Importing Distributor’s License (the latter is necessary to import beer into Illinois). A Distributor’s License “shall allow the wholesale purchase and storage of alcoholic liquors and sale of alcoholic liquors to licensees in this State and to persons without the State, as may be permitted by law.” 235 ILCS 5/5-1(b). An Importing Distributor’s License

may be issued to and held by those only who are duly licensed distributors, upon the filing of an application by a duly licensed distributor, with the Commission and

the Commission shall, without the payment of any fee, immediately issue such importing distributor's license to the applicant, which shall allow the importation of alcoholic liquor by the licensee into this State from any point in the United States outside this State, and the purchase of alcoholic liquor in barrels, casks or other bulk containers and the bottling of such alcoholic liquors before resale thereof, but all bottles or containers so filled shall be sealed, labeled, stamped and otherwise made to comply with all provisions, rules and regulations governing manufacturers in the preparation and bottling of alcoholic liquors. The importing distributor's license shall permit such licensee to purchase alcoholic liquor from Illinois licensed non-resident dealers and foreign importers only.

235 ILCS 5/5-1(c).

Illinois Licensing History of AB Inc. and Its Affiliates and the CITY Entities

26. AB Inc. does not brew beer in Illinois, but its beer is widely distributed, sold, and consumed in Illinois.

27. Since 1982 when the Illinois General Assembly created the separate NRD license class, AB Inc. has held an Illinois NRD License. During each year from 1982 through 2009, the ILCC has renewed AB Inc.'s NRD License.

28. AB Inc. has held in its own name one or more Distributor's and Importing Distributor's Licenses, issued and renewed annually by the ILCC, continuously during the period from 1982 through 2005. After 1982, when Illinois amended the Liquor Control Act to include the NRD License category and the ILCC issued AB Inc. an NRD License, the ILCC continued to (and never gave any indication that it would not continue to in the future) renew AB Inc.'s Distributor's and Importing Distributor's Licenses during each year from 1982 through 2005.

29. During much of the period from 1982 through 2005, an affiliate of AB Inc. also held one or more Distributor's and Importing Distributor's Licenses. From 2005

through the present, WEDCO, an affiliate of AB Inc., has owned a substantial stake in an entity that has held Distributor's and Importing Distributor's Licenses.

30. In 2005, pursuant to an agreement with the Soave Entities, AB Inc. contributed an entity that held Distributor's and Importing Distributor's Licenses to CITY Beverage, a newly-formed entity. The Soave Entities contributed CITY Markham, CITY Bloomington, and CITY Chicago entities, which held Distributor's and Importing Distributor's Licenses to CITY Beverage. As a result of this transaction, WEDCO, an affiliate of AB Inc. owned 30 percent of CITY Beverage and the Soave Entities owned the other 70 percent interest in CITY Beverage. WEDCO's 30 percent interest in CITY Beverage has continued through the present day.

31. The CITY Entities have received renewals of their Distributor's and Importing Distributor's Licenses from 2005 through the present day.

DEFENDANTS' UNCONSTITUTIONAL ENFORCEMENT OF ILLINOIS LAW

32. On December 10, 2009, AB Inc. affiliate WEDCO executed a letter of intent to purchase from the Soave Entities the 70 percent interest in CITY Beverage that WEDCO did not already own. The acquisition of the entire CITY Beverage business is a unique and important business opportunity for WEDCO and AB Inc. CITY Beverage maintains well-established distribution capabilities and will generate many synergies for AB Inc. and its affiliates. The transaction also represents a substantial opportunity for Soave Enterprises to sell its stake in CITY Beverage and put the proceeds from the sale to use in its other operations.

33. On January 6, 2010, AB Inc. notified the ILCC that it planned to purchase the remaining 70 percent of CITY Beverage. Over the period from January 6, 2010,

through February 10, 2010, representatives of AB Inc. and WEDCO had numerous routine contacts with representatives of the ILCC to provide them with information about the transaction.

34. At no time during the course of the numerous discussions and conversations between representatives of the ILCC and representatives of AB Inc. and WEDCO that took place from January 6, 2010, through February 10, 2010, did representatives of the ILCC state that WEDCO's acquisition of CITY Beverage would violate Illinois law.

35. On February 11, 2010, *the day before* WEDCO was scheduled to close its acquisition of CITY Beverage, Defendant Haymaker informed AB Inc. and WEDCO that the proposed transaction would be illegal. (Ex. A.) Defendant Haymaker declared the proposed transaction to violate Illinois law on the ground that the Liquor Control Act "prohibits common ownership of businesses that hold a Non-Resident Dealer's license and distributor licenses." (*Id.*) In other words, according to the ILCC, AB Inc. may not be affiliated with a holder of a Distributor's and Importing Distributor's Licenses because AB Inc. is an out-of-state beer producer that holds an NRD License. Moreover, Defendant Haymaker informed AB Inc. that WEDCO's current 30 percent interest in CITY Beverage, which it had held since 2005, was illegal for that same reason.

36. Defendants' conduct amounts to thinly-veiled economic protectionism of in-state businesses because in-state beer producers are permitted to simultaneously brew beer and hold Distributor's and Importing Distributor's Licenses, thus permitting them to import and distribute beer. In other words, according to Defendants, in-state Brewers are *eligible* to hold Distributor's and Importing Distributor's Licenses (which permit that Brewer to import and

distribute beer directly to retailers) while out-of-state Brewers are *ineligible* to hold Distributor's and Importing Distributor's Licenses.

37. Examples of beer producers to whom the ILCC has issued Distributor's Licenses include Goose Island Beer Co. ("Goose Island") and Argus Brewery ("Argus"). Both Goose Island and Argus operate *in-state* breweries and hold Brewer's Licenses and Distributor's Licenses. As producers and sellers of beer, AB Inc. and its affiliates compete directly with Goose Island and Argus. As distributors of beer, the CITY Entities compete directly with Goose Island and Argus.

38. During discussions with the legal staff of the ILCC after receipt of the February 11, 2010 letter, Defendant Haymaker indicated to representatives of Plaintiffs that because AB Inc. does not conduct brewing activities in the State of Illinois, *i.e.*, is an out-of-state Brewer with an NRD License, it would not be eligible to procure Distributor's or Importing Distributor's Licenses. Haymaker stated, however, that an in-state Brewer with a Brewer's License *may* hold a Distributor's License. Apart from the prohibition imposed by the ILCC by virtue of AB Inc. holding an NRD license, AB Inc. meets, and is prepared to act in accordance with, all necessary requirements to hold Illinois Distributor's and Importing Distributor's licenses.

39. On February 19, 2010, Gary Rutledge, Vice-President, General Counsel, and Secretary of Anheuser-Busch Companies wrote to the ILCC, requesting a hearing of the ILCC regarding the subject matter of the February 11 letter from Defendant Haymaker.

40. On February 19, 2010, Kathleen McCann, Senior Vice President of CITY Beverage, wrote to the ILCC requesting that the ILCC convene regarding the subject matter of the February 11 letter from Defendant Haymaker.

41. In response to Plaintiffs' February 19 letters, the ILCC scheduled for March 2, 2010, an "Open Meeting for a Discussion on the Question of whether an Illinois Non-Resident Dealer may hold Illinois Distributor's Licenses" (hereinafter, the "Special Session").

42. Prior to the Special Session, Defendant Haymaker and the ILCC legal staff submitted a memorandum of fact and law, which states that Illinois law permits in-state brewers to hold Distributor's and Importing Distributor's Licenses but denies the same to out-of-state brewers. The submission stated that under the 1982 amendments to the Liquor Control Act, holders of an NRD license are not eligible to hold Distributor's and Importing Distributor's Licenses, but in-state brewers may hold a Brewer's License and the Liquor Control Act "leaves no ambiguity" that an Illinois Brewer with a Brewer's License may hold a Distributor's License. The submission also stated that as of the 1982 amendments:

[A]n out-of-state beer manufacturer could no longer hold a brewers license which became an in-state license only. The new NRD license became the only license an out-of-state brewer could hold. Once the NRD became the mandated license, out-of-state brewers lost their authority to hold Illinois distributors licenses.

43. On March 2, 2010, the ILCC held the Special Session at 160 N. LaSalle Street, Chicago, Illinois. At the meeting, Defendant Haymaker informed the Commission again that in-state brewers may hold a Brewer's License and a Distributor's License, but that an out-of-state brewer may only hold an NRD License and may *not* hold Distributor's or Importing

Distributor's Licenses. Specifically, Defendant Haymaker stated in his presentation to the ILCC at the Special Session:

We realize that the legislature from time to time can carve out exceptions to the general rule. We're not naive enough to know that that doesn't occur. In many cases they have done this. They have done this in the case of an in-state brewer. An in-state brewer, specifically in the Act, can hold distributor licenses. . . . And, yet, there is no specific exception to allow a nonresident dealer to distribute.

Why would the legislature decide to create specific exceptions in many other cases, but not to nonresident dealers? The answer is because they didn't want out-of-state brewers to hold a distributor's license because that would clearly and dramatically undermine the three-tier system like we know it today.

44. On March 10, 2010, the ILCC issued a "Declaratory Ruling" in connection with this matter (the "Declaratory Ruling"). By unanimous vote of the ILCC, the Declaratory Ruling states that AB Inc. and its affiliates

are currently on notice that the Liquor Control Act prohibits an Illinois licensed Non-resident Dealer from possessing an ownership interest in a licensed Illinois Distributor. If CITY Beverage should notify the Illinois Liquor control Commission per ILCC Rule 100.100 that AB Inc, WEDCO or any of its affiliates has purchased any additional interest in CITY Beverage, then the ILCC will consider CITY Beverage licenses to be held in violation of the Liquor Control Act and the licenses will be subject to revocation or refused renewal.

(Ex. B at 2.) Thus, Defendants have prohibited out-of-state beer producers and their affiliates from distributing beer in Illinois, while the Liquor Control Act permits in-state beer producers to do so.¹

¹ The Declaratory Ruling further states that, by vote of four of the seven Commissioners:

Based on the facts of this case, it has been determined that AB Inc., through its affiliate WEDCO has owned a 30% interest in CITY Beverage since 2005. The Illinois Liquor Control Commission will renew said CITY Beverage distributors licenses upon their expiration and as currently owned absent any other license disqualifying factors. This factual determination is limited solely to the history and facts surrounding this case and will have no bearing on future legal declarations or rulings of the Illinois Liquor Control Commission.

(Ex. B at 3.)

45. The Declaratory Ruling further states: “This is a Declaratory Ruling of the Illinois Liquor Control Commission and *is not subject to appeal* per 235 ILCS 100/5-150 [sic] of the Illinois Administrative Procedure Act.” (Ex. B at 4 (emphasis added).) Thus, Defendants issued their decision in such a way as to attempt to thwart Plaintiffs’ opportunity to seek review in an Illinois State court of the Defendants’ denial of Plaintiffs’ constitutional rights—despite that Defendants are well aware of the urgent need to close the acquisition. Defendant Schnorf noted as much in the Special Session when he said “We’ve got people involved in the proposed business transaction with a significant amount of money involved. . . . So we’ve decided to call this meeting. . . . I can tell you that I will urge the Commission that we should do whatever we’re going to do as expeditiously as possible so that the business practices can continue and whatever things end up needing to go to court can go to court and so forth.”

46. Given Defendants’ enforcement of Illinois law and threatened punitive action, WEDCO cannot reasonably close the transaction for CITY Beverage, and this fact has severely harmed AB Inc., WEDCO, the CITY Entities, and the Soave Entities.² AB Inc. and WEDCO are currently being denied the benefits of the transaction and its synergies, and are competing at a disadvantage to in-state brewers. Further, Plaintiffs are faced with great uncertainty as to whether the transaction can be consummated and important business decisions are suspended until the issue is resolved. If the deal is not completed, Plaintiffs would suffer significant economic harm. AB Inc. and WEDCO would be denied the benefits of the transaction

² Defendants can impose administrative penalties, revoke licenses, and levy fines for violation of the Liquor Control Act—violation of the Liquor Control Act also is a criminal offense. If WEDCO acquires CITY Beverage prior to an adjudication of their constitutional rights in this Court, Defendants could take the foregoing actions against AB Inc., WEDCO, or any of their affiliates, including the newly acquired CITY Beverage entity. The threat of this harm is imminent because, as stated in the Declaratory Ruling, Plaintiffs already are in violation of the Liquor Control Act by virtue of AB Inc.’s interest in CITY Beverage. The Declaratory Ruling states that if CITY Beverage notifies the ILCC that the transaction closes, the ILCC will consider CITY Beverage licenses to be in violation and subject to revocation or refused renewal. (Ex. B.)

and its synergies, and would compete at a disadvantage to in-state brewers. Of course, the Soave Entities would not receive the proceeds of the sale and would be unable to fulfill other vital business commitments.

47. The Soave Entities have agreed to sell their 70 percent interest in CITY Beverage to WEDCO for a substantial amount of money. The agreement to sell was a culmination of months of negotiations and due diligence at great time and expense to all involved. The Soave Entities have made numerous commitments that were to take effect upon the closing of the transaction, all of which have been postponed, at a significant cost, as a result of Defendants' actions. The delay in closing has caused, and will continue to cause, significant, ongoing, and irreparable harm to the Soave Entities.

48. Defendants' attempt to impermissibly favor in-state brewers over non-resident brewers discriminates against interstate commerce and thus violates the Commerce Clause of the United States Constitution. The effect of this explicit discrimination is to confer substantial economic benefits on in-state beer producers at Plaintiffs' expense. In-State beer producers enjoy an opportunity for greater profits due to self-distribution and also the ability to maximize the competitiveness of their brands through their unique control and focus of the distribution function.

49. Defendants have attempted to foreclose Plaintiffs from seeking Illinois State court review of Defendants' unlawful enforcement of the Liquor Control Act. Defendants actions amount to a deprivation of Plaintiffs' "life, liberty, or property," without adequate procedural safeguards, within the meaning of the procedural due process requirements of the Fourteenth Amendment.

50. Further, Defendants' conduct violates the Contracts Clause. Defendants' declaration that WEDCO's pending agreement to purchase CITY Beverage would violate Illinois liquor law constitutes a substantial impairment of AB Inc.'s agreement with the Soave Entities.

51. Defendants' actions have caused substantial injury and, unless enjoined, will continue to cause substantial, and indeed irreparable, injury to Plaintiffs for which they have no adequate remedy at law.

CAUSES OF ACTION

COUNT I

(42 U.S.C. § 1983 Violation of Commerce Clause)

52. Plaintiffs repeat and reallege each of the preceding paragraphs of the Complaint as if fully set forth herein.

53. “[S]tate laws violate the Commerce Clause if they mandate ‘differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.’” *Granholm v. Heald*, 544 U.S. 460, 472 (2005) (citing *Oregon Waste Sys., Inc. v. Dep’t of Envt'l. Quality of Or.*, 511 U.S. 93, 99 (1994)).

54. Defendants prohibit out-of-state beer producers and their affiliates from distributing beer in Illinois, while permitting in-state beer producers to do so. Defendants' conduct is economic protectionism of in-state businesses because in-state producers are permitted to simultaneously brew alcoholic beverages and hold Distributor's and Importing Distributor's Licenses.

55. Defendants' attempt to impermissibly favor in-state producers over non-resident producers discriminates against interstate commerce and thus violates the Commerce Clause of the United States Constitution. The effect of this discrimination is to confer substantial economic benefits on in-state beer producers at Plaintiffs' expense. This constitutional violation is itself an irreparable injury.

56. This unconstitutional prohibition also is irreparably injuring Plaintiffs because it is preventing WEDCO from acquiring the remainder of CITY Beverage. The parties face great uncertainty as to the fate of the transaction, and if it cannot proceed, would cause the loss of a significant business opportunity for Plaintiffs. The resolution of this matter is therefore of the utmost urgency to Plaintiffs.

COUNT II
(42 U.S.C. § 1983 Violation of Procedural Due Process of Fourteenth Amendment)

57. Plaintiffs repeat and reallege each of the preceding paragraphs of the Complaint as if fully set forth herein.

58. The ILCC has purported to determine Plaintiffs' rights under the Liquor Control Act and United States Constitution through a process that does not permit Illinois State court review. Defendants' sudden reversal of over 25 years of ILCC precedent and plain contravention of the Liquor Control Act was the product of a highly suspect and arbitrary process. This process also resulted in a portion of the Declaratory Ruling that is supported only by a bare majority of the ILCC. Defendants actions amount to a deprivation of Plaintiffs' "life, liberty, or property," within the meaning of the Fourteenth Amendment, without adequate procedural safeguards. This process as a whole has been fundamentally unfair and have led to an erroneous outcome.

59. The basis of the Declaratory Ruling is that under the Liquor Control Act the holder of an NRD License may not hold, or be affiliated with the holder of, Distributor's or Importing Distributor's Licenses. However, this ruling conflicts with the plain language of the Liquor Control Act and Plaintiffs' rights under the United States Constitution.

60. This erroneous ruling results in significant and irreparable harm to Plaintiffs given the great uncertainty as to whether the transaction can be consummated, including that important business decisions are suspended until the issue is resolved; that AB Inc. and WEDCO are being denied the benefits of the transaction and its synergies, to their competitive disadvantage; and the further economic harm to the Soave Entities.

61. Given the important rights at issue here, and the significant and irreparable injury that result from Defendants' interpretation and enforcement of the Liquor Control Act, Plaintiffs' procedural due process rights have been violated.

COUNT III
(42 U.S.C. § 1983 Violation of Contracts Clause)

62. Plaintiffs repeat and reallege each of the preceding paragraphs of the Complaint as if fully set forth herein.

63. Article I, section 10, clause 1 of the United States Constitution provides that "No State shall ... pass any Law impairing the Obligation of Contracts."

64. Defendants' conduct violates the Contracts Clause. Defendants entered into a contract in 2005 with a third-party that resulted in WEDCO owning a 30 percent interest in

CITY Beverage. In January 2010, WEDCO entered into an agreement with the Soave Entities to purchase the remaining 70 percent interest in CITY Beverage.

65. Defendants interpretation and enforcement of the Liquor Control Act to Plaintiffs constitutes a change in the law as it is a drastic departure from the Liquor Control Act and from the previous application of the law to Plaintiffs.

66. Defendants' declaration that WEDCO's pending agreement to purchase CITY Beverage would violate the Liquor Control Act results in a substantial impairment of AB Inc.'s contractual relationship with majority owners of CITY Beverage as pertaining to CITY Beverage. Defendants have substantially impaired WEDCO's recent agreement with the Soave Entities to purchase the remaining 70 percent interest in CITY Beverage.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court grant the following relief and judgment:

- a. Enter judgment against Defendants on all counts;
- b. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 that Defendants' enforcement of Illinois law violates the Commerce, Due Process, and Contracts Clauses of the United States Constitution.
- c. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 that it is unconstitutional for Defendants to deny AB Inc. or its affiliate licenses necessary to distribute beer in Illinois on the ground that AB. Inc. is an out-of-state producer of beer while in-state beer producers are permitted to distribute beer in Illinois.
- d. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 that it is unconstitutional for Defendants to deny AB Inc. or its affiliate Distributor's and Importing Distributor's Licenses on the ground that AB. Inc. is an out-of-state producer of beer that holds an NRD License while in-state beer producers are permitted to hold Distributor's and Importing Distributor's Licenses.
- e. Preliminarily and permanently enjoin Defendants from obstructing WEDCO's acquisition of CITY Beverage.

- f. Preliminarily and permanently enjoin Defendants from denying the CITY Entities Distributor's and Importing Distributor's Licenses on the ground that AB Inc. is an affiliate of WEDCO or other entities that are, or hold an interest in, Illinois distributors.
- g. Award Plaintiffs reasonable attorneys' fees pursuant to 42 U.S.C. 1988(b); and
- h. All other and further relief as this Court shall deem just and proper.

Dated: March 10, 2010

Respectfully submitted,

/s/ Edward M. Crane

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