

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

TANNINS OF INDIANAPOLIS, LLC et al.,

Plaintiffs,

v.

Civil Action No. 3:19-cv-504-DJH-CHL

DANIEL CAMERON,<sup>1</sup> in his official  
capacity as Attorney General of Kentucky,  
and ALLYSON COX TAYLOR, in her  
official capacity as Commissioner of the  
Department of Alcoholic Beverage Control,

Defendants.

\* \* \* \* \*

**ORDER**

Kentucky law prohibits out-of-state wine retailers from delivering or shipping wine directly to Kentucky residents. *See* Ky. Rev. Stat. § 244.165(1). Plaintiffs Tannins of Indianapolis, LLC; Jack Bailey; Steven A. Bass; and David Kittle challenge this law as violating the Commerce Clause and Privileges and Immunities Clause of the United States Constitution. (D.N. 33, PageID 169–70) Defendant Daniel Cameron, on behalf of the Commonwealth of Kentucky, has moved to dismiss Plaintiffs’ second amended complaint. (D.N. 47) For the reasons set forth below, Cameron’s motion will be granted.

**I.**

The Court “take[s] the facts only from the complaint, accepting them as true as [it] must do in reviewing a 12(b)(6) motion.” *Siefert v. Hamilton Cnty.*, 951 F.3d 753, 757 (6th Cir. 2020) (citing Fed R. Civ. P. 12(b)(6)). Plaintiffs Bass and Kittle are wine consumers who wish to purchase wine from out-of-state wine retailers and have those wines shipped to their residences in

---

<sup>1</sup> Per Federal Rule of Civil Procedure 25(d), Cameron is automatically substituted for his predecessor, Andrew G. Beshear.

Kentucky. (D.N. 33, PageID # 170–71) Plaintiff Tannins of Indianapolis is an Indiana company, operated by Plaintiff Bailey, that “has received requests from Kentucky residents that it sell and deliver wine to them.” (*Id.*, PageID # 171) Kentucky law prohibits Tannins from shipping wine directly to interested Kentucky consumers like Bass and Kittle. (*Id.*) Specifically, Kentucky law makes it “unlawful for any person in the business of selling alcoholic beverages in another state or country to deliver or ship or cause to be delivered or shipped any alcoholic beverage directly to any Kentucky consumer who does not hold a valid wholesaler or distributor license issued by the Commonwealth.” Ky. Rev. Stat. § 244.165(1).

## II.

To survive a motion to dismiss for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Factual allegations are essential; “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” and the Court need not accept such statements as true. *Id.* A complaint whose “well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct” does not satisfy the pleading requirements of Federal Rule of Civil Procedure Rule 8 and will not withstand a motion to dismiss. *Id.* at 679; *see* Fed. R. Civ. P. 8.

### A. Commerce Clause

Cameron argues that the Sixth Circuit’s recent decision in *Lebamoff* forecloses Plaintiffs’ Commerce Clause challenge. (*See* D.N. 47, PageID # 220 citing *Lebamoff Enters. Inc. v. Whitmer*,

956 F.3d 863 (6th Cir. 2020), *cert. denied sub nom. Lebamoff Enters. v. Whitmer*, No. 20-47, 2021 WL 78088 (U.S. Jan. 11, 2021) *Lebamoff* resolved a question strikingly similar to the one at issue here: “whether Michigan may permit its retailers to offer at-home deliveries within the State while denying the same option to an Indiana retailer who does not have a Michigan retail license.” *Lebamoff*, 956 F.3d at 867. Like Michigan, Kentucky employs a “three-tier” system to regulate alcohol, requiring producers to sell to in-state wholesalers, who sell to in-state retailers, who in turn sell to consumers. *See id.* at 868; *see Cherry Hill Vineyards, LLC v. Hudgins*, 488 F. Supp. 2d 601, 618 (W.D. Ky. 2006), *aff’d sub nom. Cherry Hill Vineyards, LLC v. Lilly*, 553 F.3d 423 (6th Cir. 2008) (“Kentucky has a well-established three-tier system in place.”). Noting the “accordion-like interplay” of the Commerce Clause and the Twenty-first Amendment at the heart of the case, Judge Sutton explained in the *Lebamoff* opinion that when a court is “faced with a dormant Commerce Clause challenge to an alcohol regulation,” a unique test applies. *Lebamoff*, 956 F.3d at 869. This test asks “whether the law ‘can be justified as a public health or safety measure or on some other legitimate nonprotectionist ground’”—if so, the law stands. *Id.* (quoting *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449, 2472 (2019)). Applying this test, the court found the Michigan law justified because states “have legitimate interests in ‘promoting temperance and controlling the distribution of [alcohol],’” *id.* at 871 (quoting *North Dakota v. United States*, 495 U.S. 423, 433 (1990)), and in promoting these interests, “[s]tates have ‘virtually complete control over whether to permit importation or sale of liquor and how to structure the[ir] liquor distribution system[s].’” *Id.* (quoting *Granholm v. Heald*, 544 U.S. 460, 488 (2005)). The court therefore held Michigan’s law constitutional. *Id.* at 870.

Plaintiffs do not contend that *Lebamoff* is inapplicable here—rather, they attempt to discredit *Lebamoff* as a “depart[ure] from the precedents of the Supreme Court and the Sixth

Circuit.” (D.N. 49, PageID # 236; *see id.* at PageID # 231 (noting that *Lebamoff* “upheld the constitutionality of a similar Michigan statute.”)) But these efforts fall flat. Plaintiffs argue that *Lebamoff* is the only case to “determine[] the constitutionality of the [liquor] law [at issue] by looking only at the Twenty-first Amendment.” (D.N. 49, PageID # 237) This is plainly incorrect—as mentioned above, the *Lebamoff* court thoroughly analyzed the “interplay” of the Commerce Clause and the Twenty-first Amendment. *See Lebamoff*, 956 F.3d at 869–74. Plaintiffs further argue that “[a] panel of the Sixth Circuit obviously cannot overrule Supreme Court precedents” and that *Lebamoff* conflicts with the Supreme Court’s decision in *Granholm*. (D.N. 49, PageID # 237) *See Granholm*, 544 U.S. 460. But the *Lebamoff* court squarely addressed *Granholm*, noting that *Granholm*’s holding did “not change [the court’s] calculus” because *Granholm* “concerned a discriminatory *exception* to a three-tier system” which allowed in-state wineries to “avoid in-state wholesalers and retailers” and deliver directly to consumers while denying the same privilege to out-of-state wineries.<sup>2</sup> *Lebamoff*, 956 F.3d at 874. The *Granholm* Court itself noted this distinction, explaining that the laws at issue “involve[d] straightforward attempts to discriminate in favor of local *producers*,” whereas “[s]tate policies are protected under the Twenty-first Amendment when they treat liquor *produced* out of state the same as its domestic equivalent.” *Granholm*, 544 U.S. at 489 (emphasis added). In *Lebamoff*, as here, the contested law fell into that second, protected category.

Finally, Plaintiffs point out differences between prior cases and *Lebamoff*—for example, that “earlier cases critically examined the evidence presented by the State to justify discrimination.” (D.N. 49, PageID # 239) But Plaintiffs do not explain how any of these claimed differences conflict with the holding of *Lebamoff*. (*See id.*, PageID # 238–39) *Lebamoff* is

---

<sup>2</sup> Notably, the Supreme Court denied certiorari in *Lebamoff*. *See* 2021 WL 78088 at \*1.

controlling precedent that binds this Court and applies to the matter at hand. Plaintiffs have pleaded no facts to distinguish the issue here from the one addressed in *Lebamoff*. (See D.N. 33, PageID # 169 (noting that plaintiffs are “challenging the constitutionality of . . . [Kentucky laws] that prohibit wine retailers located outside the state from selling, delivering, or shipping wine directly to Kentucky residents, while at the same time allowing its own retailers to do so”) See *Lebamoff*, 956 F.3d at 870 (explaining that the issue answered affirmatively by the court is that “Michigan may have a three-tier system that requires all alcohol sales to run through its in-state wholesalers . . . [and] it may require retailers to locate within the State . . . [and may] limit the delivery options created by the new law to in-state retailers”). *Lebamoff* thus forecloses Plaintiffs’ Commerce Clause claim, and this claim must be dismissed.

**B. Privileges and Immunities Clause**

Cameron argues that Plaintiffs fail to state a claim under the Privileges and Immunities Clause. (D.N. 47, PageID # 222) Cameron also argues that Plaintiffs lack standing to challenge the residency requirement underlying this claim. (*Id.*, PageID # 224–25) The residency requirement in § 243.100(1)(f) previously limited the issuance of liquor licenses to those who had been Kentucky residents for at least one year prior to applying, but it has been repealed since Plaintiffs brought this suit. See 2020 S.B. 99 § 4 (striking § 243.100(1)(f)). Plaintiffs concede that this change in law “has rendered moot [their] claim that the denial of licenses to nonresidents violates the Privileges and Immunities Clause (Count II),” and they “do not oppose dismissing” this claim. (D.N. 49, PageID # 231) Plaintiffs’ Privileges and Immunities Clause claim will therefore be dismissed.

**III.**

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** that Cameron's motion to dismiss (D.N. 47) is **GRANTED**. Plaintiffs' second amended complaint as against Attorney General Cameron is **DISMISSED**. The Clerk of Court is **DIRECTED** to substitute Cameron for Beshear as a defendant in the record of this matter. Plaintiffs are **DIRECTED** to show cause as to why their claims against Defendant Taylor should not be dismissed for the reasons set forth in this Order. Plaintiffs shall respond to the Court's order within **ten (10) days**.

February 12, 2021

A handwritten signature in black ink, appearing to read "D.J. Hale", is written over a circular official seal of the United States District Court.

**David J. Hale, Judge  
United States District Court**