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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ROBERT FREEMAN, JUDY FREEMAN,
JEAN-PAUL WEG., LLC d/b/a THE WINE
CELLARAGE, LARS NEUBOHN, and
PETER BERNSTEIN,

Plaintiffs,

v.

PHILIP D. MURPHY, Governor of New
Jersey, GURBIR SINGH GREWAL, Attorney
General of New Jersey, and JAMES
GRAZIANO, Acting Director of the New
Jersey Alcohol Beverage Control Division,

Defendants.

Case No.:

Civil Action

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 New Jersey law, practices, and regulations that allow in-state wine retailers to sell, deliver, and ship wine directly to consumers but prohibit out-of-state wine retailers from doing so. An out-of-state wine retailer, such as The Wine Cellarage, and many other wine internet sellers throughout the United States, cannot sell, ship, and deliver to New Jersey consumers based upon belief and information that this practice is illegal. The plaintiffs seek a

declaratory judgment that this regulatory scheme is unconstitutional for two reasons: (1) it violates the Commerce Clause-because it discriminates against out-of-state wine retailers engaged in interstate commerce, and (2) it violates the Privileges and Immunities Clause of Article IV, section 2, because it denies nonresident wine merchants the privilege of engaging in their occupation in New Jersey on terms equivalent to those given to citizens of New Jersey. The plaintiffs seek an injunction barring the defendants from enforcing these practices and regulations and requiring them to allow out-of-state wine retailers to sell, ship, and deliver wine to New Jersey consumers upon the same terms as in-state wine retailers.

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.

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

PLAINTIFFS

3. Consumer Plaintiffs Robert and Judy Freeman are residents of Denville, Morris County, New Jersey. They are over the age of twenty-one and are legally permitted to purchase, receive, possess and drink wine at their residence. They are wine collectors and consumers of fine wine and would purchase wine from out-of-state wine retailers which would be added to their wine collection, and have those wines shipped to their residence in New Jersey, if New Jersey practices and regulations permitted them to do so. They are also winemakers.

4. Consumer Plaintiff Peter Bernstein resides in Wayne, Passaic County, New Jersey and is a wine connoisseur. He is over the age of twenty-one and is legally permitted to purchase,

receive, possess and drink wine at his residence. He desires to purchase special wines that are difficult to locate. He would purchase wine from out-of-state wine retailers and have those wines shipped to his residence in New Jersey, if New Jersey practices and regulations permitted him to do so.

5. Plaintiff Jean-Paul Weg, LLC d/b/a The Wine Cellarage., is a New York limited liability company that operates a wine retail store in The Bronx, New York and engages in internet sales. It has customers from all over the country, including many from New Jersey. It has developed long-term relationships with customers for whom it makes special purchases. It has received requests that it sell, ship, and deliver wine to New Jersey from customers, but is unable to do so as a result of its understanding of New Jersey rules, regulations, and practices. It intends to sell, ship, and deliver wines directly to consumers in New Jersey if the rules and regulations prohibiting such sales and shipments are removed or declared unconstitutional.

6. Lars Neubohn is a professional wine consultant, advisor, and merchant who resides in and is a resident of Connecticut. He owns and operates The Wine Cellarage located in The Bronx, New York.

7. The Wine Cellarage maintains an Internet web site and has previously handled deliveries and shipping of wine that was purchased from its retail store.

8. Plaintiffs intend to pay all taxes that may be due on such interstate shipments and to comply with all other non-discriminatory state regulations, including obtaining licenses.

DEFENDANTS

9. Defendants are sued in their official capacities.

10. Defendant Philip D. Murphy is the Governor of New Jersey and is the chief executive officer.

11. Defendant Gurbir Singh Grewal is the Attorney General of New Jersey and is generally empowered to enforce New Jersey laws.

12. Defendant James Graziano is the Acting Supervisor of the New Jersey Alcoholic Beverage Control Division, which is charged with enforcing New Jersey liquor control laws and regulations, including the ones challenged in this lawsuit.

13. Defendants are acting under color of state law when they enforce or supervise the enforcement of the statutes and regulations challenged herein.

Count I: Commerce Clause Violation

14. In the State of New Jersey, a resident wine retailer may sell, ship, and deliver by common carrier or company vehicles directly to New Jersey consumers any wine that it has in its inventory.

15. The Wine Cellarage is not located in New Jersey, is not eligible for a New Jersey retail distribution license, and is prohibited by law from selling, delivering, or shipping wine from its inventory directly to consumers in New Jersey.

16. Robert and Judy Freeman are wine consumers and they want the opportunity to buy wine directly from The Wine Cellarage and other wine retailers outside of New Jersey and to have these wines delivered to their residence.

17. They have contacted several out-of-state wine retailers either on the Internet or by phone in order to buy wines they cannot find in New Jersey.

18. Most wine retailers who carry rare and unusual wine are located in California or New York, and Robert and Judy Freeman 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.

19. Peter Bernstein is a wine consumer and he wants the opportunity to buy wine directly from The Wine Cellarage and other wine retailers outside of New Jersey and to have these wines delivered to his residence.

20. Mr. Bernstein has attempted to purchase wine from out-of-state wine retailers, including wine which he could not obtain either in his hometown or in New Jersey and has been denied these purchases.

21. Some wines that he wants to buy are not available in retail stores in New Jersey but are available from retail stores in other states. This includes older vintages no longer generally available except at specialty wine retailers located outside New Jersey, and current vintages that have sold out locally after receiving favorable reviews or because few bottles of limited production wine were allocated to New Jersey.

22. Consumer Plaintiffs cannot complete the transactions described in paragraphs 16-21 because the laws, regulations, and practices of New Jersey prohibit direct sales and shipments of wine from out-of-state wine retailers to in-state consumers and state officials will not issue any kind of license that would allow such transactions.

23. If The Wine Cellarage were permitted to sell, ship, and deliver its wine directly to consumers in the State of New Jersey, it would obtain a license if one were available and would comply with the same rules concerning labeling, shipping, reporting, obtaining proof of age, and paying taxes as in-state wine retailers do.

24. By refusing to allow it to sell, ship, and deliver wine upon the same terms as in-state wine retailers, the State of New Jersey is discriminating against interstate commerce and protecting the economic interest of local businesses by shielding them from competition, in violation of the Commerce Clause of the United States Constitution.

Count II: Privileges and Immunities Clause Violation

25. Plaintiffs repeat and re-allege paragraphs 1-24 as if set out fully herein.

26. Lars Neubohn is a professional wine consultant, advisor, and merchant who resides in and is a citizen of New York. He owns and operates The Wine Cellarage in New York.

27. Mr. Neubohn develops personal relationships with many of his customers, makes special wine purchases for them, consults with them about wine in person, by telephone and by Internet, and sells and delivers wine to them.

28. Mr. Neubohn has also received requests from his customers to send wine to residents of New Jersey but was unable to ship the specifically requested wines because the laws, practices, and regulations of New Jersey prevent him from doing so

29. Some wines wanted by Mr. Neubohn's customers are difficult to obtain because they are old and only sold at auction, available only in limited allocated amounts or only for a limited time, or scarce because of their popularity.

30. Mr. Neubohn wants to practice his profession as a wine merchant in New Jersey by consulting with, obtaining wines for, and delivery wines to New Jersey residents, but is prevented from doing so by New Jersey law, rules, and regulations.

31. Mr. Neubohn is the owner of The Wine Cellarage and has personally suffered economic harm by not being able to complete sales to New Jersey customers.

32. Mr. Neubohn has not applied to New Jersey officials for a retail license because it would be futile to do so since he is not a resident of New Jersey.

33. If a license were available on terms equivalent to those for New Jersey citizens, Mr. Neubohn would obtain it. He does not ask for the right to engage in the unlicensed sale of wine in New Jersey.

34. Being a professional wine merchant who sells and ships wine to New Jersey residents is a lawful activity for citizens of New Jersey.

35. No substantial reason exists for denying citizens of New York the same privilege to consult about, advise on, obtain, sell, ship, and deliver wine to New Jersey consumers as is given to citizens of New Jersey.

36. New Jersey's ban on wine sales and deliveries by out-of-state merchants denies Mr. Neubohn the privilege to engage in his occupation in the state upon the same terms as New Jersey citizens, and therefore violates the Privileges and Immunities Clause in Article IV of the United States Constitution.

Request For Relief

WHEREFORE, Plaintiff seeks the following relief:

A. Judgment declaring New Jersey law, practices and regulations that prohibit out-of-state wine retailers from selling, shipping, and delivering wine directly to a New Jersey consumer unconstitutional as a violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring New Jersey's law, practices and regulations that prohibit a nonresident from obtaining a license to sell, ship, and deliver wine directly to New Jersey consumers unconstitutional as a violation of the Privileges and Immunities Clause of the United States Constitution.

C. An injunction prohibiting Defendants from enforcing those rules and regulations and requiring them to allow out-of-state wine retailers to obtain licenses and to sell, ship, and deliver wine directly to customers in New Jersey.

D. Plaintiffs do not request that the State be enjoined from collecting any tax due on the sale of wine.

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

F. Such other relief as the Court deems appropriate to afford Plaintiffs full relief.

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Dated: July 3, 2019

CERTIFICATION PURSUANT TO LOCAL CIV. RULE 11.2

I hereby certify pursuant to Local Civil Rule 11.2 that to my knowledge the within matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated at this time. I further certify that to my knowledge, no other party should be joined in the within action at this time.

s/ Michael J. Cohen

Michael J. Cohen

Dated: July 3, 2019