

No. 20-15447

---

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

ORION WINE IMPORTS, LLC, and PETER CREIGHTON

*Plaintiffs-Appellants*

vs.

JACOB APPLESMITH, in his official capacity as Director of the  
California Department of Alcoholic Beverage Control,

*Defendant-Appellee*

---

On Appeal from the U. S. District Court for the Eastern District of  
California, D.C. No. 2:18-cv-01721-KJM-DB  
Hon. Kimberly J. Mueller, U.S. District Judge

---

**OPENING BRIEF OF APPELLANTS**

---

James A. Tanford  
Robert D. Epstein  
Epstein, Cohen, Seif & Porter, LLP  
50 S. Meridian St., Suite 505  
Indianapolis IN 46204  
tanfordlegal@gmail.com  
Rdepstein@aol.com  
tel (317) 639-1326  
fax (317) 638-9891

*Attorneys for Plaintiffs-Appellants*

## **Corporate Disclosure Statement**

Orion Wine Imports, LLC, is not a parent, subsidiary or other affiliate of a publicly owned corporation and no publicly owned corporation owns any of its stock.

## Table of Contents

Table of Authorities . . . . .	iii
Jurisdictional Statement . . . . .	1
Statement of the Issues . . . . .	2
Statement Concerning the Addendum . . . . .	2
Statement of the Case . . . . .	3
Summary of Argument . . . . .	7
Standard of Review . . . . .	10
<b>Argument . . . . .</b>	<b>11</b>
<b>A. Standing is the only issue presented on appeal . . . . .</b>	<b>11</b>
<b>B. Injury and causation have been adequately pled . . . . .</b>	<b>13</b>
<b>C. The injury is redressable . . . . .</b>	<b>15</b>
<b>1. Invalidating the physical-presence requirement will redress Orion’s injury . . . . .</b>	<b>15</b>
<b>2. No independent statute would prohibit Orion from delivering wine directly to retailers . . . . .</b>	<b>17</b>
Conclusion . . . . .	26
Certificate of service . . . . .	27
Certificate of compliance . . . . .	28
Addendum: Pertinent sections of Cal. Bus. & Prof. Code . . . . .	29

## Table of Authorities

### CASES

<i>Breiner v. Nev. Dept. of Corrections</i> , . . . . .	20
610 F.3d 1202 (9th Cir. 2010).	
<i>Cal. Dept. of Soc. Services v. Thompson</i> , . . . . .	12, 23, 24, 25
321 F.3d 835 (9th Cir. 2003)	
<i>Cal. Sea Urchin Com’n v. Bean</i> , . . . . .	8, 10, 15, 16, 18, 19
883 F.3d 1173 (9th Cir. 2018)	
<i>East Bay Sanctuary Covenant v. Trump</i> , . . . . .	12, 13
950 F.3d 1242 (9th Cir. 2020).	
<i>Enron Oil Trading &amp; Transp. Co. v. Walbrook Ins. Co., Ltd.</i> , . . . . .	11
132 F.3d 526 (9th Cir. 1997).	
<i>Facebook, Inc. v. Power Ventures, Inc.</i> , . . . . .	24
252 F.Supp.2d 765 (N.D. Cal. 2017)	
<i>Internat. Broth. of Teamsters v. U.S.</i> , . . . . .	20
431 U.S. 324 (1977)	
<i>Italian Colors Restaurant v. Becerra</i> , . . . . .	6
878 F.3d 1165 (9th Cir. 2018)	
<i>Kirola v. City &amp; Co. of San Francisco</i> , . . . . .	25
860 F.3d 1164 (9th Cir. 2017)	
<i>Lujan v. Defenders of Wildlife</i> , . . . . .	12, 17, 18, 24
504 U.S. 555 (1992).	
<i>M.S. v. Brown</i> , . . . . .	15
902 F.3d 1076 (9th Cir. 2018).	

<i>Massachusetts v. EPA</i> , . . . . .	16
549 U.S. 497 (2007)	
<i>Mayfield v. U.S.</i> , . . . . .	15
599 F.3d 964 (9th Cir. 2010)	
<i>Mont. Shooting Sports Assoc. v. Holder</i> , . . . . .	11, 13
727 F.3d 975 (9th Cir. 2013)	
<i>Nat'l Audubon Soc'y, Inc. v. Davis</i> , . . . . .	8, 13, 15, 20, 21
307 F.3d 835 (9th Cir. 2002).	
<i>Nuclear Info. &amp; Resource Serv. v. Nuclear Regulatory Com'n</i> , . . . . .	9, 18, 22
457 F.3d 941 (9th Cir. 2006).	
<i>Patel v. Facebook, Inc.</i> , . . . . .	11
932 F.3d 1264 (9th Cir. 2019).	
<i>Renee v. Duncan</i> , . . . . .	15
686 F.3d 1002 (9th Cir. 2012).	
<i>Skyline Wesleyan Church v. Cal. Dept. of Managed Health</i> . . . . .	9, 18, 24
959 F.3d 341 (9th Cir. 2010).	
<i>Tyler v. Cuomo</i> , . . . . .	11, 20
236 F.3d 1124 (9th Cir. 2000).	
<i>U.S. v. Holtzman</i> , . . . . .	24
762 F.2d 720 (9th Cir. 1985)	
<i>Valle del Sol Inc. v. Whiting</i> , . . . . .	6
732 F.3d 1006 (9th Cir. 2013)	
<i>WildEarth Guardians v. U.S.</i> , . . . . .	14
795 F.3d 1148 (9th Cir. 2017).	

CONSTITUTION, STATUTES & RULES

U.S. CONST., ART. I, § 8, cl. 3 . . . . .	5
U.S. CONST., ART. IV, § 2 . . . . .	5
U.S. CONST., AMEND. XXI, § 2 . . . . .	5
28 U.S.C. § 1291 . . . . .	1
28 U.S.C. § 1331 . . . . .	1
42 U.S.C. § 1983 . . . . .	1
Fed. R. App. P 4(1)(a) . . . . .	1
Fed. R. Civ. P. 12(b)(1) . . . . .	1, 2
Fed. R. Civ. P. 12(b)(6) . . . . .	5
Cal. Bus. & Prof. Code § 23000 . . . . .	7
Cal. Bus. & Prof. Code § 23017 . . . . .	8, 10, 21, 22, 23, 24, 25
Cal. Bus. & Prof. Code § 23025 . . . . .	16
Cal. Bus. & Prof. Code § 23026 . . . . .	12
Cal. Bus. & Prof. Code § 23036 . . . . .	12
Cal. Bus. & Prof. Code § 23300 . . . . .	20
Cal. Bus. & Prof. Code § 23320(b)(9-10) . . . . .	12
Cal. Bus. & Prof. Code § 23356 . . . . .	12
Cal. Bus. & Prof. Code § 23374 . . . . .	3, 16, 19, 23

Cal. Bus. & Prof. Code § 23374.6 . . . . .	12, 19
Cal. Bus. & Prof. Code § 23375 . . . . .	3, 22
Cal. Bus. & Prof. Code § 23378 . . . . .	3, 16, 23
Cal. Bus. & Prof. Code § 23394 . . . . .	12
Cal. Bus. & Prof. Code § 23402 . . . . .	16
Cal. Bus. & Prof. Code § 23405.2 . . . . .	<i>passim</i>
Cal. Bus. & Prof. Code § 23661 . . . . .	<i>passim</i>
Cal. Bus. & Prof. Code § 23667 . . . . .	17
Cal. Bus. & Prof. Code § 23668 . . . . .	12
Cal. Bus. & Prof. Code § 23775 . . . . .	19
Cal. Bus. & Prof. Code § 23779 . . . . .	19
Cal. Bus. & Prof. Code § 24041 . . . . .	12

OTHER AUTHORITIES

13A CHARLES A. WRIGHT, FED. PRACTICE & PROCEDURE . . . . .	10, 19
§ 3531.5 (3d ed. 2019).	
U.C.C. § 9-102(19-20) . . . . .	22

## **JURISDICTIONAL STATEMENT**

District Court Jurisdiction. Plaintiffs brought this action pursuant to 42 U.S.C. § 1983, claiming that certain provisions in California's Alcoholic Beverage Control Act discriminated against interstate commerce in violation of the Commerce Clause. Complaint ¶ Intro., ER p. 19. The district court had jurisdiction to hear this case pursuant to 28 U.S.C. § 1331 which confers original jurisdiction on federal district courts to hear all civil actions arising under the Constitution, laws, or treaties of the United States.

Jurisdiction of Court of Appeals. This appeal is from the district court's final judgment (ER p. 3) and Order (ER pp. 13-14) dismissing the complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of standing, entered on February 21, 2020. Plaintiffs filed a notice of appeal on March 12, 2020 (ER p. 1), which is timely under Fed. R. App. P 4(1)(a). This court has jurisdiction pursuant to 28 U.S.C. § 1291, which authorizes the circuit courts to hear appeals from final judgments of the district courts.



## STATEMENT OF THE ISSUE

The substantive issue is whether two provisions in the California Alcoholic Beverage Control Act violate the Commerce Clause by prohibiting out-of-state wine distributors from delivering wine directly to retailers. All wine entering California must be come to rest at premises in the state and an out-of-state distributor would have to establish such premises in order to deliver wine. The District Court dismissed the complaint *sua sponte* under Fed. R. Civ. P. 12(b)(1) for lack of standing. It concluded that plaintiffs' inability to deliver wine to California retailers was caused by several ABC regulations and not exclusively by the provisions challenged in the complaint, so that invalidating those provisions alone would not give plaintiffs the relief they sought – the ability to distribute wine directly to retailers in the state. The court concluded that the injury was not redressable. Order, ER p. 13, lines 24-27. The only issue on appeal is whether the plaintiffs have standing, which this court reviews *de novo*.

## STATEMENT CONCERNING THE ADDENDUM

Pertinent statutes needed to resolve this case are set forth verbatim in an addendum bound with this brief beginning at page 29.

## STATEMENT OF THE CASE

In California, wine from foreign countries typically is delivered to restaurants and other retailers by distributors who hold both importer and wholesaler licenses from the Department of Alcoholic Beverage Control. Cal. Bus. & Prof. Code § 23775. An importer license authorizes the distributor to bring wine into California and store it at a warehouse located in the state. *Id.* § 23661(a).<sup>1</sup> A wholesaler license authorizes it to deliver the wine to retailers. *Id.* § 23378. The distributor may transfer title to the wine from itself as an importer to itself as a wholesaler, *id.* § 23374, so the whole process is seamless, may be conducted entirely on the distributor's own premises, and does not require the distributor to involve any third parties.

Orion Wine Imports, LLC, is a licensed Florida-based distributor of foreign wine. In its Third Amended Complaint, Orion challenges the constitutionality of a provision in Cal. Bus. & Prof. Code § 23661(a), which requires that all wine entering the state must come to rest at a warehouse located in California before being delivered to retailers.

---

<sup>1</sup> The distributor may use its own warehouse or an authorized public warehouse. Cal. Bus. & Prof. Code § 23661(a).

Complaint ¶¶ 9, 17, ER pp. 21-22. This provision prohibits out-of-state wine distributors from doing what similarly situated in-state businesses can do –sell and deliver wine directly to retailers. Orion must take an extra step – either consign the wine to an unrelated distributor with premises in California, or establish a second set of distribution facilities and a principal office in the state. *Id.* § 23405.2(a). Both options impose costs on Orion not borne by distributors located in California, raise the price of its wine, and give its in-state competitors an economic advantage. Complaint ¶¶ 16-20, ER p. 22. Because of this law, Orion was unable to complete an agreement to supply wine to The Pour House, a wine shop in Truckee, California, and lost that sale. Complaint ¶¶ 23-25, ER p. 23. Orion is also prevented from developing future business opportunities to supply its wine to other restaurants and retailers.

Orion has sued Jacob Applesmith, Director of the Department of Alcoholic Beverage Control, in his official capacity. Complaint ¶ 6, ER p. 20. Orion seeks a declaratory judgment that two provisions discriminate against out-of-state wine distributors in violation of the

Commerce Clause:<sup>2</sup> the requirement that all wine entering California must be processed through premises located in the state, Cal. Bus. & Prof. Code § 23661(a), and the requirement that wine distributors must have a principal office in the state. *Id.* § 23405.2(a). Orion seeks an injunction barring ABC Director Applesmith from enforcing these provisions and requiring him to allow out-of-state wine distributors who obtain the proper licenses to deliver wine directly to California retailers without having to consign the wine to an unrelated California-based distributor or establish a physical presence in the state.

Director Applesmith moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that the California ABC Act does not discriminate against nonresidents and/or that the Twenty-first Amendment<sup>3</sup> makes these regulations immune from Commerce Clause scrutiny. Motion to Dismiss, ER pp. 15-16.

---

<sup>2</sup> “The Congress shall have the power [to] regulate commerce ... among the several states.” U.S. CONST., ART. I, § 8, cl. 3. The Complaint also alleges that these provisions violate the Privileges and Immunities Clause, U.S. CONST., art. IV, § 2, but plaintiffs are not pursuing that claim on appeal.

<sup>3</sup> “The transportation or importation into any State... for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.” U.S. CONST., AMEND. XXI, § 2.

The District Court dismissed the complaint for a different reason: lack of standing. Order, ER pp. 13-14. Its decision departed from the usual rule that a party whose proposed course of business is being prohibited by a state statute has standing to challenge its constitutionality. *E.g.*, *Italian Colors Restaurant v. Becerra*, 878 F.3d 1165, 1171 (9th Cir. 2018); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1015 (9th Cir. 2013). The District Court ruled that Orion had failed to establish redressability because other provisions in the ABC Act that had not been specifically challenged would continue to prohibit Orion from delivering wine directly to retailers even if Cal. Bus. & Prof. Code §§ 23661(a) and 23405.2(a) were declared unconstitutional. Order, ER pp. 12-13. The court raised this issue *sua sponte*, Order, ER p. 11, lines 10-16, and decided it without adequate briefing by the parties. Perhaps for that reason, the court's opinion did not cite and was inconsistent with Ninth Circuit precedents on redressability.<sup>4</sup> The decision should be reversed and the case allowed to proceed to the merits.

---

<sup>4</sup> At the hearing on the motion to dismiss, a crowded calendar caused the court to cut off argument before plaintiffs' counsel had the opportunity to fully address the issue, which may have contributed to the problem.

## SUMMARY OF ARGUMENT

Orion Wine Imports, LLC, a Florida-based wine distributor, has challenged the constitutionality of two provisions in California's ABC Act<sup>5</sup> that prevent it from delivering its wine directly to retailers in California, claiming they violate the Commerce Clause. The District Court dismissed the complaint *sua sponte* for lack of standing. The court thought there were other ABC regulations that prohibited Orion from delivering wine directly to retailers, so the injury was not redressable. The court's decision departs from Ninth Circuit precedent and should be reversed.

The elements of standing are injury, causation and redressability. There is no genuine dispute about the first two prongs. Orion has alleged that it lost a contract to supply wine to a California retailer because the ABC Act prohibits an out-of-state distributor from delivering wine directly to a retailer. All wine entering the state must come to rest at and be distributed from warehouse facilities located in California by a company with a principal office in the state. Cal. Bus. &

---

<sup>5</sup> The Act is Cal. Bus. & Prof. Code §§ 23000 *et seq.* The provisions challenged are § 23661(a) and §23405.2(a).

Prof. Code §§ 23661(a), 23405.2(a). Orion has no premises in California and cannot afford to establish them. Allegations that a law forbids economic activity a plaintiff would otherwise engage in is usually sufficient to establish injury and causation. *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 856 (9th Cir. 2002).

There also is no genuine dispute about basic redressability. The state official responsible for enforcing the ABC Act is the defendant Jacob Applesmith, so the court can enjoin him from enforcing the physical-presence provisions. Orion has alleged it will obtain the necessary importer and wholesaler licenses once the physical-presence requirements are struck down, and those licenses would authorize it to import wine into California and deliver it to retailers. At the pleading stage, an allegation that a plaintiff will take specific future action if a statutory barrier is removed, together with the court's authority to enjoin the defendant from enforcing those barriers, usually is sufficient to establish redressability. *Cal. Sea Urchin Comm'n v. Bean*, 883 F.3d 1173, 1181-82 (9th Cir. 2018).

The District Court ruled that it could not redress Orion's complaint because a separate statute prohibited the same conduct, citing Cal.

Bus. & Prof. Code § 23017(b). That section defines an importer as the person in California to whom delivery of alcohol is first made, and the court construed this provision as independently prohibiting Orion from delivering to a retailer. The court's decision was inconsistent with Ninth Circuit precedent.

The existence of a separate regulatory statute makes a claim non-redressable only under four conditions, none of which are satisfied here.

(1) The other provision must clearly prohibit the same conduct.

*Nuclear Info. & Resource Serv. v. Nuclear Regulatory Com'n*, 457 F.3d 941, 955 (9th Cir. 2006). There is no language in Cal. Bus. & Prof. Code § 23017(b) prohibiting direct deliveries. It is a definition, not a regulatory provision.

(2) The other statute must be independent of the one being challenged and a different official must be responsible for enforcing it who is not a party and would not be subject to the court's order.

*Skyline Wesleyan Church v. Cal. Dept. of Managed Health Care*, 959 F.3d 341, 352 (9th Cir. 2010). Section 23017(b) is not a separate and independent provision enforced by a different official; it is part of the ABC Act and Director Applesmith easily could be enjoined from



using it to circumvent the court's ruling.

(3) The other provision must be constitutional. 13A CHARLES A. WRIGHT, FED. PRACTICE & PROCEDURE § 3531.5 (3d ed. 2019). If the court declared the physical-presence requirement in Cal. Bus. & Prof. Code § 23661(a) unconstitutional, the same requirement in § 23017(b) would also be invalid.

(4) The existence of the other statute must make it impossible for the court to provide any relief or remove any of the roadblocks contributing to plaintiff's injury. *Cal. Sea Urchin Comm'n v. Bean*, 883 F.3d at 1181-82. Section 23017(b) does not deprive the court of the ability to remove the two most important impediments to Orion's ability to deliver wine to retailers – the physical presence requirements in Cal. Bus. & Prof. Code §§ 23661(a) and 23405.2(a).

When it dismissed the complaint *sua sponte* and without the benefit of briefing by the parties, the District Court simply got the law wrong.

### **STANDARD OF REVIEW**

This Court reviews *de novo* a district court's decision to dismiss a complaint for lack of standing, construing the allegations in the complaint in the light most favorable to the plaintiffs. *Mont. Shooting*

*Sports Assoc. v. Holder*, 727 F.3d 975, 979 (9th Cir. 2013). Both the trial and reviewing courts must accept as true all material allegations in the complaint and draw reasonable inferences from it in favor of the plaintiff. *Tyler v. Cuomo*, 236 F.3d 1124, 1131 (9th Cir. 2000). At the pleading stage, general factual allegations of injury resulting from the defendant's conduct usually suffice because courts presume general allegations embrace the specific facts that are necessary to support the claim. *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1270 (9th Cir. 2019). Dismissal at the pleading stage may only be granted if it appears beyond doubt that plaintiffs can establish no facts to support a claim for relief. *Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co., Ltd.*, 132 F.3d 526, 529 (9th Cir. 1997).

## ARGUMENT

### A. Standing is the only issue presented on appeal

Orion Wine Imports, LLC, a Florida-based wine distributor, challenges the constitutionality of two California ABC laws that prevent it from delivering wine to retailers in California. The District Court dismissed the complaint *sua sponte* for lack of standing, so this is the only issue on appeal. The court decided that invalidating those

provisions would not give Orion the relief it sought because other statutes would still impede interstate deliveries, so the injury was not redressable.<sup>6</sup> The court's decision contradicts Ninth Circuit precedent on standing.

The requirements for standing are well known. Plaintiffs must demonstrate : (1) an injury that is actual or imminent, (2) a fairly traceable causal connection between the injury and defendant's action, and (3) a likelihood that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). At the pleading stage, the only question is whether the plaintiff has alleged these elements. The determination whether a plaintiff has standing is to be made in light of the overriding principle behind the doctrine – assuring that a party has a personal stake in the outcome and presents a genuine case or controversy that warrants the use of federal-court time. *East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1265 (9th Cir. 2020).

---

<sup>6</sup> In the course of its opinion, the court cited a number of sections of the ABC Act that describe the overall regulatory structure but are not directly relevant to resolving the appeal. Cal. Bus. & Prof. Code §§ 23026, 23036, 23320(b)(9-10), 23356, 23374.5, 23374.6, 23394, 23668, 24041. Those provisions are included in the addendum.

## **B. Injury and causation have been adequately pled**

Plaintiffs have clearly alleged injury and causation so those parts of standing are not at issue. A complaint is sufficient if it asserts that the challenged law forbids economic activity in which a plaintiff would otherwise engage. *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 856 (9th Cir. 2002). This complaint meets that standard. Orion alleges it is a commercial wine distributor, Complaint ¶¶4-5, ER p. 20, cannot do business in California because of the law, *id.* ¶¶9, 24, ER pp. 21, 23, and would do business in the state if the law were declared invalid. *Id.* ¶¶22-23, 26, ER p. 23.

The loss of even a small amount of money normally establishes standing, *East Bay Sanctuary Covenant v. Trump*, 950 F.3d at 1267 n.5, and Orion alleges it lost profit because it could not deliver wine to The Pour House. Complaint, ¶¶24-25, ER p. 23. This Circuit also holds that the economic burden of complying with a state regulatory scheme is by itself sufficient to establish standing to challenge those regulations. *Mont. Shooting Sports Assoc. v. Holder*, 727 F.3d at 980. Orion alleges just such a burden – that the costs of complying with California's in-state-presence requirement would make its wine more expensive, less

competitive, and harder to sell. Complaint ¶¶ 12-21. ER pp. 21-23.

Injury and causation have been adequately pled.

The District Court suggested that Orion might lack standing because its inability to sell and deliver wine to The Pour House was not caused “exclusively by” Cal. Bus. & Prof. Code § 23661(a), but was caused in part by The Pour House’s decision not to buy Orion’s wine. Order, ER p. 13, lines 21-25. This is contrary to precedent from this Circuit precedent, which holds that a plaintiff has standing as long as the act complained of is at least a partial cause of the injury, even if there are multiple causes. *WildEarth Guardians v. U.S.*, 795 F.3d 1148, 1157 (9th Cir. 2017). It does not have to be the exclusive cause.

The court’s characterization of multiple causes was wrong in any event. The complaint alleges that Orion and The Pour House mutually concluded that their proposed course of business was prohibited by the California ABC Act and that “[b]ut for the prohibition ... the parties would have entered into a contract by which Orion would have sold and shipped wine directly to the Pour House.” Complaint ¶¶ 24, 26, ER p. 23. That prohibition is a single cause of Orion’s economic loss even if it affected both buyer and seller.

## **C. The injury is redressable**

### **1. Invalidating the physical-presence requirement will redress Orion's injury**

To establish redressability, a plaintiff must show that it is likely the injury will be redressed by a favorable decision, not that redress is guaranteed. A plaintiff's burden is "relatively modest." *M.S. v. Brown*, 902 F.3d 1076, 1083 (9th Cir. 2018). If the court has the authority to order the defendant to provide relief and it is within the defendant's ability to do so, the injury is redressable. *Id.* In a case like this one, in which a plaintiff challenges the validity of a regulatory statute that adversely affects its ability to do business, it is presumed that a judgment declaring the regulation unlawful will redress the injury. *Mayfield v. U.S.*, 599 F.3d 964, 971 (9th Cir. 2010). Such a judgment changes the legal status and increases the likelihood that the plaintiff will be able to engage in the activity currently being prevented. *Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012). As long as the plaintiff alleges that it will in fact engage in the prohibited conduct after the statutory barrier has been removed, redressability is usually established. *Cal. Sea Urchin Com'n v. Bean*, 883 F.3d 1173, 1181-82 (9th Cir. 2018); *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d at 856.

An injury is redressable even if the court cannot remove all roadblocks, *Cal. Sea Urchin Com'n v. Bean*, 883 F.3d at 1181-82; and even if achieving full redress might require some changes in administrative practices and regulations that take time, *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007).

Orion has sufficiently pleaded redressability. The state official responsible for enforcing the ABC Act is the defendant Applesmith, Complaint ¶ 6, ER p. 20, so the court can enjoin him from enforcing the physical-presence provisions. A court has considerable discretion to fashion an appropriate injunction to make sure the prevailing party actually gets the relief to which it is entitled. *Cal. Dept. of Soc. Services v. Thompson*, 321 F.3d 835, 857 (9th Cir. 2003). Orion has alleged it will obtain the necessary importer and wholesaler licenses once the physical-presence requirements are struck down. Complaint ¶ 22, ER p. 23. The importer license would allow Orion to bring wine into the state. Cal. Bus. & Prof. Code §§ 23661(a), 23374. With both an importer and wholesaler license, Orion could transfer the wine from itself as an importer to itself as a wholesaler. *Id.* § 23374. The wholesaler license would allow Orion to sell and deliver the wine to retailers, *id.* §§ 23378,

23025, and the retailer to accept it. *Id.* § 23402. The delivery may be made by common carriers, who are authorized to handle deliveries on behalf of any licensee. *Id.* § 23667. None of those statutes contain any specific language that would prohibit Orion from making the delivery.

## **2. No independent statute would prohibit Orion from delivering wine directly to retailers**

There are circumstances in which a constitutional challenge to one statute is not redressable because a second statute independently prohibits the same conduct. This appears to be the basis on which the District Court dismissed the complaint. It believed that enjoining the enforcement of the physical-presence requirements in Cal. Bus. & Prof. Code §§ 23661(a) and 23405.2(a) would not redress the injury because other provisions of the ABC Act might continue to prohibit Orion from delivering wine directly to California retailers. Order, ER pp. 12-13.

This was an unusual decision for two reasons. First the existence of an independent prohibitory statute usually will defeat standing only if the official who administers it is not a party and could not be enjoined from enforcing it. *Lujan v. Defenders of Wildlife*, 504 U.S. at 569.

Director Applesmith is the state official responsible for enforcing all the ABC laws and could be enjoined from enforcing any provisions that



prohibit Orion from delivering wine to retailers, so the injury is redressable. Second, the existence of other potential regulatory impediments does not usually defeat standing as long as the court has the power to remove some of the roadblocks. *Cal. Sea Urchin Comm'n v. Bean*, 883 F.3d at 1181-82. Even if there were other regulatory impediments, enjoining the enforcement of the two physical-presence requirements in Cal. Bus. & Prof. Code §§ 23661(a) and 23405.2(a) would remove two significant roadblocks.

The District Court simply misunderstood the law. A separate statute potentially prohibiting the plaintiff's conduct makes a claim non-redressable only if four conditions exist:

(1) The other provision clearly prohibits the conduct. *Nuclear Info. & Resource Serv. v. Nuclear Regulatory Com'n*, 457 F.3d 941, 955 (9th Cir. 2006).

(2) The other statute is independent of the one being challenged and the official responsible for enforcing it is not a party. *Lujan v. Defenders of Wildlife*, 504 U.S. at 569; *Skyline Wesleyan Church v. Cal. Dept. of Managed Health Care*, 959 F.3d 341, 352 (9th Cir. 2010).

(3) The other provision is constitutional. 13A CHARLES A. WRIGHT, FED. PRACTICE & PROCEDURE § 3531.5 (3d ed. 2019).

(4) The existence of the other statute makes it impossible for the court to remove any of the roadblocks contributing to plaintiff's injury or provide even partial relief. *Cal. Sea Urchin Comm'n v. Bean*, 883 F.3d at 1181-82.

Those conditions do not exist in this case.

The District Court did not identify, nor can counsel find, any other statute which would clearly prohibit Orion from delivering wine directly to retailers if the physical-presence requirements in Cal. Bus. & Prof. Code §§ 23661(a) and 23405.2(a) were declared invalid. No statute forbids Orion from applying for California licenses. An applicant does not have to be a resident in order to obtain an importer license, *id.* §§ 23374, 23374.6, 23775, or a wholesaler license. *Id.* § 23779.<sup>7</sup> The only reason Orion does not currently hold a California importer and wholesaler license is because they are useless as long as Cal. Bus. & Prof. Code § 23661(a) would require Orion to consign wine

---

<sup>7</sup> The State agrees that “the location of one’s domicile has no bearing on the ability to obtain wine importer and/or wholesaler licenses in California.” Def. Motion to Dismiss at 4, Doc. No. 56-1.

deliveries to an entity located in the state even if it got a license, and § 23405.2(a) would require it to establish a principal office in the state. Complaint ¶¶ 9, 17-19, 21-22, ER pp. 21-23. Thus, the absence of a license is irrelevant for standing purposes because it has long been a principle of standing that a plaintiff does not have to undertake a futile gesture prior to bringing a lawsuit. *Internat. Broth. of Teamsters v. U.S.*, 431 U.S. 324, 365-66 (1977); *Breiner v. Nev. Dept. of Corrections*, 610 F.3d 1202, 1206 (9th Cir. 2010). If Orion prevails and those provisions are struck down, the complaint avers that Orion will get the necessary licenses. Complaint ¶¶ 22, 25, ER p. 23. An assertion that a plaintiff will take specific future action if a statutory barrier is removed is sufficient to establish redressability. *See Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d at 856; *Tyler v. Cuomo*, 236 F.3d at 1131.

Although its opinion is unclear, the District Court may have thought Orion was seeking to distribute wine without a license. In its opinion, the court referred to a number of sections of the ABC Act that require licenses to distribute wine, including Cal. Bus. & Prof. Code § 23300, which makes unlicensed distribution unlawful. Order, ER p. 13, lines 5-13. If in fact Orion were seeking the right to engage in

unlicensed distribution, § 23300 would prohibit it from delivering to retailers even if the physical-presence requirements were declared invalid. Without a license, Orion would still have to consign the wine to an unrelated importer and wholesaler. Cal. Bus. & Prof. Code § 23661(a). But Orion is not asking for the right to make unlicensed deliveries. The complaint clearly alleges that “[i]f Orion were permitted to sell and deliver its wine directly to California-licensed retailers from its Florida location, it would obtain California importer and wholesaler licenses.” Complaint ¶ 22, ER p. 23. Absent a showing that Orion is somehow ineligible for a license, that allegation is sufficient to establish redressability. *See Nat’l Audubon Soc’y, Inc. v. Davis*, 307 F.3d at 856.

There was one specific statute the District Court thought would continue to prohibit Orion from delivering wine directly to a retailer even if the physical-premises provisions were declared invalid: Cal. Bus. & Prof. Code § 23017(b). That section does nothing of the sort. It is merely one of several definitions of “importer.” It contains no language that prohibits or regulates deliveries to retailers, and an independent statute must clearly prohibit the same conduct as the one being

challenged in order for it to defeat redressability. *Nuclear Info. & Resource Serv. v. Nuclear Regulatory Com'n*, 457 F.3d at 955.

Nevertheless, the court reasoned that because this section defined an importer as “any person ... to whom delivery is first made in this State of alcoholic beverages,” it would make the retailers who received Orion’s deliveries unlicensed importers,<sup>8</sup> and so the deliveries would be unlawful. Order, ER pp. 12-13.

State alcoholic beverage regulations are notoriously difficult to read and the court got this one wrong. There are four definitions of importer in Cal. Bus. & Prof. Code § 23017, not one. It also defines an importer as “[a]ny consignee of alcoholic beverages brought into this State from without this State,” *id.* § 23017(a), which would be Orion.<sup>9</sup> Orion would be allowed to bring the wine into the state with an importer license, *id.*

---

<sup>8</sup> A person may not hold both a retailer and an importer license. Cal. Bus & Prof. Code § 23775.

<sup>9</sup> The ABC Act does not define consignee, so the standard meaning applies of a person to whom goods are entrusted for resale. Orion alleges that it receives wine from foreign countries and resells them to retailers, Complaint ¶ 4, ER p. 20, and therefore fits the definition. Indeed, this is the typical definition that applies to those businesses located within California that need an importer’s license. *See also* U.C.C. § 9-102(19-20) (a consignee is a merchant to whom goods are delivered for resale).

§ 23661(a), transfer it to itself with a wholesaler's license, *id.* § 23374, and then lawfully deliver it to retailers. *Id.* § 23378. That is what similarly situated wine distributors located in California do. The retailer is clearly not an importer when it receives wine from a distributor who holds an importer and wholesaler license. Only if Orion were unlicensed would the law require the recipient to have an importer's license, because all wine must be brought into California by a licensed importer. *Id.* § 23661(a).

It is possible that Director Applesmith could interpret Cal. Bus. & Prof. Code § 23017(b) to prohibit retailers from accepting Orion's shipments because they do not have importer's licenses even if Orion obtained one. This possibility does not make the complaint non-redressable. The District Court can simply enjoin the defendant from using that section to circumvent its ruling that the physical-presence requirements in §§ 23661(a) and 23405.2(a) are unconstitutional. A court has considerable discretion to fashion an appropriate injunction to make sure the prevailing party actually gets the relief to which it is entitled. *Cal. Dept. of Soc. Services v. Thompson*, 321 F.3d at 857. It may even enjoin otherwise lawful conduct if necessary to make its

injunction effective. *U.S. v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985); *Facebook, Inc. v. Power Ventures, Inc.*, 252 F.Supp.2d 765, 784 (N.D. Cal. 2017), *aff'd* 749 Fed. Appx. 557 (9th Cir. 2019) (principle is “well established”). The existence of a separate statute that might continue to prevent plaintiff’s proposed conduct defeats standing only if the official responsible for enforcing that statute is not a party and therefore would not be bound by the terms of an injunction. *Lujan v. Defenders of Wildlife*, 504 U.S. at 569; *Skyline Wesleyan Church v. Cal. Dept. of Managed Health Care*, 959 F.3d at 352. That is not the case here because these are all ABC laws enforced by the defendant, Director Applesmith.

The District Court asserted that it could not enjoin Applesmith from using Cal. Bus. & Prof. Code § 23017(b) to prohibit Orion from making direct wine deliveries because the complaint did not ask specifically that he be enjoined from doing so. Order, ER p. 12, lines 22-24. This is contrary to Ninth Circuit precedent which says quite clearly that the District Court “shall grant the relief to which the party ... is entitled, even if the party has not demanded such relief in the party’s pleadings.” *Cal. Dept. of Soc. Services v. Thompson*, 321 F.3d at 857.

It often happens that new matters emerge as a case develops that were not anticipated when the complaint was filed.<sup>10</sup> The scope of the proper injunction that will be needed to provide relief to the plaintiffs is therefore not controlled by the parties' initial pleadings, but is a matter for judicial discretion after all aspects of the case are known. *Id.*

Redressability turns on whether a court is capable of granting effective relief, and a plaintiff “does not lose standing because she proposed an injunction that the district court thought too narrow.” *Kirola v. City & Co. of San Francisco*, 860 F.3d 1164, 1176 (9th Cir. 2017). “[E]very final judgment shall grant the relief to which the party ... is entitled.” *Cal. Dept. of Soc. Services v. Thompson*, 321 F.3d at 857. Assuming *arguendo* that Cal. Bus. & Prof. Code § 23017(b) could be interpreted as implicitly prohibiting direct deliveries to retailers even after the court declared the explicit prohibition unconstitutional, the court can easily enjoin the defendant from such an obvious attempt to evade its ruling.

---

<sup>10</sup> In this case, the non-redressability argument was raised for the first time by amici, see Order, ER p. 11, lines 10-16. Director Apple-smith did not suggest this as a possible interpretation until his final reply brief. Def. Reply at 2-3, Doc. No. 64.



## Conclusion

For the foregoing reasons, the District Court's order dismissing the case should be reversed and Director Applesmith's motion to dismiss the Third Amended Complaint should be denied.

Respectfully submitted,  
*Attorneys for Plaintiffs*

/s/ James A Tanford

James A. Tanford

Robert D. Epstein

EPSTEIN COHEN SEIF & PORTER

50 S. Meridian St., Suite 505

Indianapolis, IN 46204

Tel: 317-639-1326; Fax: 317-638-9891

tanfordlegal@gmail.com

Rdepstein@aol.com

**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2020, I electronically filed the foregoing brief with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. All participants in the case are registered CM/ECF users will and will be served by the CM/ECF system.

June 16, 2020.

**s/ James A. Tanford**  
James A. Tanford

## CERTIFICATE OF COMPLIANCE

I am the attorney for plaintiff-appellants.

This brief contains 5146 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief complies with the word limit of Cir. R. 32-1.

June 16, 2020.

**s/ James A. Tanford**

James A. Tanford

## ADDENDUM

### TABLE OF CONTENTS

Cal. Bus. & Prof. Code § 23000 . . . . .	30
Cal. Bus. & Prof. Code § 23017 . . . . .	30
Cal. Bus. & Prof. Code § 23025 . . . . .	30
Cal. Bus. & Prof. Code § 23026 . . . . .	31
Cal. Bus. & Prof. Code § 23036 . . . . .	31
Cal. Bus. & Prof. Code § 23300 . . . . .	31
Cal. Bus. & Prof. Code § 23320(b)(9-10) . . . . .	31
Cal. Bus. & Prof. Code § 23356 . . . . .	32
Cal. Bus. & Prof. Code § 23374 . . . . .	32
Cal. Bus. & Prof. Code § 23374.6 . . . . .	32
Cal. Bus. & Prof. Code § 23375 . . . . .	33
Cal. Bus. & Prof. Code § 23378 . . . . .	33
Cal. Bus. & Prof. Code § 23394 . . . . .	33
Cal. Bus. & Prof. Code § 23402 . . . . .	33
Cal. Bus. & Prof. Code § 23405.2 . . . . .	34
Cal. Bus. & Prof. Code § 23661 . . . . .	35
Cal. Bus. & Prof. Code § 23667 . . . . .	37
Cal. Bus. & Prof. Code § 23668 . . . . .	37
Cal. Bus. & Prof. Code § 23775 . . . . .	37
Cal. Bus. & Prof. Code § 23779 . . . . .	37
Cal. Bus. & Prof. Code § 24041 . . . . .	38

Cal. Bus. & Prof. Code § 23000.

This division shall be known and may be cited as the “Alcoholic Beverage Control Act.”

Cal. Bus. & Prof. Code § 23017.

“Importer” means:

(a) Any consignee of alcoholic beverages brought into this State from without this State, when the alcoholic beverages are for delivery or use within this State.

(b) Any person, except a public warehouse licensed under this division, to whom delivery is first made in this State of alcoholic beverages brought into this State from without this State for delivery or use within this State.

(c) Any person, licensed as an importer, selling alcoholic beverages to nonlicensees within an area over which the United States Government exercises jurisdiction, when delivery of the alcoholic beverages is made to the nonlicensees by a common carrier transporting the alcoholic beverages from a point outside this State.

(d) Any person bringing alcoholic beverages into this State from without this State which are not consigned to any person and which are for delivery or use within this State.

A person licensed as a customs broker who is acting as an agent for a licensed importer or for another person whose place of business is without the State shall not be deemed to be the importer of alcoholic beverages consigned in United States internal revenue bond or in United States customs bond to the licensed customs broker.

Cal. Bus. & Prof. Code § 23025.

“Sell” or “sale” and “to sell” includes any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the licensee from whom such beverages were purchased.

Cal. Bus. & Prof. Code § 23026.

“Retail sale” or “sale at retail” means the sale by an on- or off-sale licensee for consumption and not for resale.

Cal. Bus. & Prof. Code § 23036.

“Public warehouse” means any place licensed for the storage of, but not the sale of, alcohol or alcoholic beverages for the account of other licensees and includes United States custom bonded warehouses and United States internal revenue bonded warehouses when the bonded warehouses are used for storage of alcoholic beverages for the account of another licensee.

Cal. Bus. & Prof. Code § 23300

No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division.

Cal. Bus. & Prof. Code § 23320(b)(9)

The following are the types of licenses and the annual fees to be charged therefor:

(9) For a Type 09--Beer and wine importer: the fee through September 30, 2019, is seventy-seven dollars (\$77) and the fee on and after October 1, 2019, is one hundred ten dollars (\$110).

Cal. Bus. & Prof. Code § 23320(b)(10)

The following are the types of licenses and the annual fees to be charged therefor:

(10) For a Type 10--Beer and wine importer's general license: the fee through September 30, 2019, is three hundred forty dollars (\$340) and the fee on and after October 1, 2019, is five hundred forty dollars (\$540).

Cal. Bus. & Prof. Code § 23356.

Any manufacturer's or winegrower's license authorizes the person to whom it is issued to become a manufacturer or producer of the alcoholic beverage specified in the license, and to do any of the following:

(a) Whether manufactured or produced by him or her or any other person, to package, rectify, mix, flavor, color, label, and export the alcoholic beverage specified in the license.

(b) To sell only those alcoholic beverages as are packaged by or for him or her only to persons holding wholesaler's, manufacturer's, winegrower's, manufacturer's agent's, or rectifier's licenses authorizing the sale of those alcoholic beverages and to persons who take delivery of those alcoholic beverages within this state for delivery or use without the state.

(c) To deal in warehouse receipts for the alcoholic beverage specified in the license.

Cal. Bus. & Prof. Code § 23374.

Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license, to export the alcoholic beverages, and to transfer the beverages to himself under another license

Cal. Bus. & Prof. Code § 23374.6

A beer and wine importer's general license authorizes the person to whom issued to become an importer of beer or wine and to sell state tax paid beer or wine to beer manufacturer's, wine grower's, beer and wine wholesaler's, wine rectifier's and beer and wine importer's general licensees.

Cal. Bus. & Prof. Code § 23375

(a) A public warehouse license authorizes the storage of alcoholic beverages for the account of another licensee, including storage in a United States customs bonded warehouse, a United States internal revenue bonded warehouse, and a United States bonded wine cellar.

(b) The department may issue to the holder of a public warehouse license a duplicate of the original public warehouse license for each additional warehouse operated by the licensee, which authorizes the exercise of all privileges of the original public warehouse license at the additional warehouse or warehouses.

(c) The term “duplicate public warehouse license,” as used in this section, only applies herein.

Cal. Bus. & Prof. Code § 23378

Any wholesaler's license authorizes the sale of the alcoholic beverage specified in the license only to persons holding licenses issued by the department authorizing the sale of the alcoholic beverage, and authorizes the exportation of the alcoholic beverage.

Cal. Bus. & Prof. Code § 23394

An off-sale general license includes the privileges specified in Section 23393 and authorizes the sale, to consumers only and not for resale, except to holders of daily on-sale general licenses issued pursuant to Section 24045.1, of distilled spirits for consumption off the premises where sold. Standards of fill for distilled spirits authorized for sale pursuant to this section shall conform in all respects to the standards established pursuant to regulations issued under the Federal Alcohol Administration Act (27 U.S.C. Secs. 201 et seq.) and any amendments thereto.

Cal. Bus. & Prof. Code § 23402

No retail on- or off-sale licensee, except a daily on-sale general licensee holding a license issued pursuant to Section 24045.1, shall purchase alcoholic beverages for resale from any person except a person holding a beer manufacturer's, wine grower's, rectifier's, brandy manufacturer's, or wholesaler's license.



Cal. Bus. & Prof. Code § 23405.2

(a) Any limited liability company holding a license under this division shall maintain a record of its members at the principal office of the company in California and the record of its members shall be available to the department for inspection. The company shall report to the department in writing any of the following:

(1) Issuance or transfer of memberships to any person where the issuance or transfer results in the person owning 10 percent or more of the voting interests of the company.

(2) If the limited liability company is managed by a manager or managers, any change in the manager or managers of the company.

(3) If any officer has been appointed, any change in the officers of the company.

The report shall be filed with the department within 30 days after the issuance or transfer of membership voting interests, or any change in members, managers, or officers.

(b) Any limited liability company within the purview of this section that is required under the provisions of the Federal Alcohol Administration Act<sup>1</sup> or the Internal Revenue Code<sup>2</sup> to report to the federal government the information required by this section may send to the department a copy of the report at the same time as it is sent to the federal government. The copy of the report sent to the department by the company shall be deemed sufficient compliance with the provisions of this section.

(c) The reporting requirements of subdivision (b) shall not apply to a limited liability company that is required by law to file periodic reports with the Securities and Exchange Commission.

(d) The person or persons who are required to sign the application shall certify to the department on forms prescribed by the department whether or not any member, manager, or officer holds an ownership interest, directly or indirectly, in any license within or without this state to manufacture, import, distribute, rectify, or sell alcoholic beverages. The department may deny any application or suspend or revoke any license under this section in the event any member,

manager, or officer holds or acquires any prohibited ownership interest, directly or indirectly, in any licensed business in violation of the tied-house provisions of Chapter 15 (commencing with Section 25500).

(e) The department may deny any application and suspend or revoke any license of a limited liability company subject to the provisions of this section where conditions exist in relation to any manager, officer, or person holding 10 percent or more of the voting interests of the limited liability company that would constitute grounds for disciplinary action against the person if he or she was a licensee.

(f) All articles of organization and operating agreements of a limited liability company or certificates or amendments thereto shall be filed with the department at the time of filing the application for the license. All articles of organization, operating agreements, certificates, or amendments executed after the issuance of the license shall be filed with the department within 30 days after execution.

(g) The requirements of this section are in addition to the requirements set forth in the California Revised Uniform Limited Liability Company Act (Title 2.6 (commencing with Section 17701.01) of the Corporations Code).

Cal. Bus. & Prof. Code § 23661.

(a) Except as otherwise provided in this section, alcoholic beverages shall be brought into this state from without this state for delivery or use within the state only by common carriers and only when the alcoholic beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division.

(b) The provisions of this chapter are not applicable in the case of alcoholic beverages which are sold and delivered by a licensee in this state to another licensee in this state, and which in the course of delivery are taken without this state through another state without any storage thereof in such other state.

(c) The provisions of subdivision (a) are not applicable in the case of a reasonable amount of alcoholic beverages brought into this state by

an adult from without the United States for personal or household use, except that a California resident returning to the United States by a vehicle that is not a common carrier, or any adult entering the United States as a pedestrian, shall be restricted to the amount of alcoholic beverages which are exempt from the payment of duty in accordance with existing provisions of federal law. These alcoholic beverages shall be exempt from state licensing restrictions.

(d) The provisions of subdivision (a) are not applicable to incidental amounts of alcoholic beverages brought into this state by an adult for personal use from a hotel that is jointly located within the jurisdictions of this state and Nevada.

(e) The provisions of subdivision (a) are not applicable in the case of alcoholic beverages shipped into this state from without the United States by an adult member of the Armed Forces of the United States, serving outside the confines of the United States, for their personal or household use within the state in such quantity of alcoholic beverages as is exempt from the payment of duty under existing provisions of the Federal Tariff Act or regulations. These alcoholic beverages may be brought into this state only by common carrier and consigned to the premises of a licensed importer or customs broker, or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division. Notwithstanding any other provisions of this division, the holder of an importer's license, a customs broker's license, or a public warehouse license, may make delivery of such alcoholic beverages as may be brought into this state under the provisions of this paragraph directly to the owner thereof upon satisfactory proof of identity. This delivery shall not be deemed to constitute a sale in this state.

(f) A manufacturer of distilled spirits shall transport such distilled spirits into this state in motor vehicles owned by or leased to the manufacturer, and operated by employees of the manufacturer, only if all of the following apply:

- (1) The distilled spirits are transported into this state from a place of manufacture within the United States.
- (2) The manufacturer holds a California distilled spirits manufacturer's license.
- (3) Delivery is made to the licensed premises of such distilled spirits manufacture.

Cal. Bus. & Prof. Code § 23667

Common carriers transporting alcoholic beverages into this State for delivery or use within this State or common carriers making delivery of alcoholic beverages so transported shall obtain from the licensed importer or customs broker a receipt on a form prescribed by the department for the alcoholic beverages so transported and delivered. If the consignee refuses to give the receipt and show his license to the carrier, the carrier is relieved of all responsibility for delivery of the alcoholic beverages.

Cal. Bus. & Prof. Code § 23668

Subject to the provisions of Section 23662, whenever the consignee is not a licensed importer or customs broker or whenever the consignee refuses to give his receipt and show his license, the carrier shall immediately notify the department at Sacramento giving full details as to the character of shipment, point of origin, destination, and address of the consignor and consignee, and within 10 days the alcoholic beverages shall be delivered to the department and shall be forfeited to the State.

Cal. Bus. & Prof. Code § 23775

An importer's license shall be issued only to a person or manufacturer who holds a license authorizing the sale for resale of the types of alcoholic beverages mentioned in the importer's license.

Cal. Bus. & Prof. Code § 23779

No wholesale license shall be issued to any person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business by sale to retail licensees of the alcoholic beverage designated in the wholesale license, and the department may revoke any wholesale license when the licensee fails for a period of 45 days actively and in good faith to engage in the wholesale business and shall revoke any distilled spirits wholesaler's license held by any person who fails to comply with applicable provisions of Sections 23378, 23379, 23776, 23777, and 23778. Sale by a wholesale licensee to himself as a retail licensee is not the transaction of a bona fide wholesale business.

Cal. Bus. & Prof. Code § 24041

Separate licenses shall be issued for each of the premises of any business establishment having more than one location, except as provided for in Sections 23355.1, 23388, 23389, and 23390, except that any manufacturer, importer, or wholesaler may receive, store, and deliver wine as specified in its license, at and from a public warehouse licensed by the department, without holding an additional license at the warehouse. A license at a public warehouse shall be required by an out-of-state business whose alcoholic beverages come to rest, are stored, and shipped from a public warehouse in California.