

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STATE OF OHIO, <i>ex rel.</i>	:	
ATTORNEY GENERAL	:	
DAVE YOST,	:	Case No. 2:20-cv-3430
	:	
Plaintiff,	:	Judge Sarah D. Morrison
	:	
v.	:	Magistrate Judge Chelsey M. Vascura
	:	
WINE.COM, INC., <i>et al.</i>	:	
	:	
Defendants.	:	

**JOINT MOTION REQUESTING APPROVAL AND ENTRY OF PROPOSED CONSENT
DECREE AND FINAL JUDGMENT ENTRY BETWEEN THE STATE OF OHIO AND
WINE.COM, INC., d.b.a. WINE.COM**

Plaintiff, the State of Ohio (“State”), and Defendant Wine.com, Inc., d.b.a. Wine.com (“Wine.com”) respectfully submit this Joint Motion requesting the Court’s approval and entry of the Consent Decree and Final Judgment Entry between the State and Wine.com (“Consent Decree”). The Consent Decree was negotiated and agreed to by the State and Wine.com in good faith. A Memorandum in Support of this Joint Motion follows.

Respectfully submitted,

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/s/ Marissa J. Palumbo

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1/22/2021)*

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MEMORANDUM IN SUPPORT

On July 8, 2020, the Plaintiff, the State of Ohio (“State”), filed a Complaint in this Court, Case No. 2:20-cv-3430, against Defendant Wine.com, Inc., d.b.a. Wine.com (“Wine.com”) and six other named Defendants. The State brought the Complaint pursuant to the Twenty-First Amendment Enforcement Act, 27 U.S.C. § 122a, seeking to preliminarily and permanently enjoin Defendants from illegally shipping any wine and/or spirituous liquor (“spirits”) into the State of Ohio. (Compl., Doc. 1, PageID # 1-25). The State argued that its action was intended to ensure that Defendants fully comply with Ohio liquor control laws, including Ohio Rev. Code Chapter 4301 and 4303.

With its Complaint, the State filed a Motion for Preliminary Injunction. (State’s Mot. Prelim. Inj., Doc. 2, PageID # 42-61). The State’s Motion for Preliminary Injunction seeks various forms of injunctive relief, including that Defendants (1) immediately cease shipping wine and/or spirits to consumers in the State of Ohio; (2) modify their websites and other ordering systems so that orders do not result in direct-to-consumer shipments of wine and/or spirits into Ohio; (3) modify their websites and other advertising materials to remove any statements indicating that consumers can order wine and/or spirits to be shipped to Ohio; (4) adequately train and educate their agents and employees that Defendants are not authorized to ship wine and/or spirits directly to consumers residing in the State of Ohio; and (5) grant the Ohio Attorney General (“Attorney General”) and the Ohio Division of Liquor Control (“Division”) access to Defendants’ business records so that the Attorney General and the Division may monitor Defendants’ compliance with Ohio liquor control laws. (*Id.* at PageID # 59-60).

Since the filing of the Complaint and the State’s Motion for Preliminary Injunction, counsel for the State and counsel for Defendant Wine.com have been working toward reaching an amicable

resolution of this matter. The State and Wine.com wish to resolve the issues in the Complaint without the burden, expense, and delay of further litigation. The State and Wine.com have agreed to the terms in the attached proposed Consent Decree to resolve this litigation as between the State and Defendant Wine.com.

The law encourages resolution of disputes like those at issue in this case. *See generally Donovan v. Robbins*, 752 F.2d 1170, 1177 (7th Cir. 1985). This is particularly true when a government actor has participated in the construction of the proposed settlement. *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990). “The criteria to be applied when a district court decides whether to approve and enter a proposed consent decree, are whether the decree is ‘fair, adequate, and reasonable, as well as consistent with the public interest.’” *United States v. Lexington-Fayette Urban Cnty. Gov’t*, 591 F.3d 484, 489 (6th Cir. 2010) (citing *United States v. Cnty. of Muskegon*, 298 F.3d 569, 580-81 (6th Cir. 2002)); *see also Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983) (noting that “[t]he ultimate issue the court must decide . . . is whether the decree is fair, adequate and reasonable”). “Protection of the public interest is the key consideration in assessing whether a decree is fair, reasonable and adequate.” *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1435 (6th Cir. 1991). Moreover, when the plaintiff is a governmental entity responsible for enforcement of the statute that provides the legal basis for the consent decree, courts generally defer to the agency’s experience and expertise in handling such matters. *See Akzo Coatings of Am., Inc.*, 949 F.2d at 1436; *United States v. BP Amoco Oil PLC*, 277 F.3d 1012, 1019 (8th Cir. 2002).

Here, the proposed Consent Decree is the culmination of good faith settlement discussions between the State and Wine.com. The proposed agreement is fair, adequate, and consistent with the public interest. The Consent Decree is consistent with the public interest in that it helps to

ensure that alleged unlawful shipments of wine do not enter the State of Ohio. Each alleged unlawful shipment of wine into Ohio potentially impedes the State's ability to effectively administer, monitor compliance with, and enforce its liquor control laws. The Ohio Revised Code establishes a Division of Liquor Control and a system of permits to ensure that all persons profiting from the sale of liquor to Ohioans do so in compliance with the law, including various health and safety considerations embodied in the Ohio Revised Code and Ohio Administrative Code. *See generally* Ohio Rev. Code Chapters 4301 and 4303. Each unlawful shipment of wine into Ohio also potentially deprives the State and its residents of public revenue in the form of unpaid sales and excise taxes. The proposed Consent Decree will help to ensure the proper collection of these taxes on the sale of wine. The fair assessment of taxes and collection of public revenue is always in the public interest.

In addition to being in the public interest, the proposed Consent Decree is reasonable and fair in that it is narrowly tailored to address the specific harm that was alleged in this lawsuit. The Consent Decree has been negotiated between the State and Wine.com and approved and signed by both. For these reasons, the State and Defendant Wine.com jointly request that the Court approve, sign, and enter the attached Consent Decree.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that the foregoing *Joint Motion Requesting Approval and Entry of Proposed Consent Decree and Final Judgment Entry between the State of Ohio and Defendant Wine.com, Inc., d.b.a. Wine.com* was filed electronically on January 22, 2020. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Marissa J. Palumbo

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