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18 *Attorneys for Plaintiffs Dwinell, LLC d/b/a Dwinell Country Ales, and North First Industries,*
19 *Inc., d/b/a Varietal Beer Co.,*

20 UNITED STATES DISTRICT COURT
21 FOR THE DISTRICT OF IDAHO

22 JANE ROBERTS, an individual;
23 STEFAN YAUCHZEE, an individual;
24 DWINELL, LLC, D/B/A DWINELL
25 COUNTRY ALES, a Washington LLC; and
26 NORTH FIRST INDUSTRIES, INC., D/B/A
27 VARIETAL BEER CO., a Washington
28 corporation.

Plaintiffs,

vs.

ROCKY GRIPTON, chief of Idaho alcohol
beverage control, RAUL LABRADOR,
Attorney General of Idaho,

Defendants.

Case No. _____

COMPLAINT

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2 Plaintiffs make the following allegations based upon information and belief, except for the
3 allegations pertaining to Plaintiffs, which are based upon personal knowledge.

4 **INTRODUCTION**

5 This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the
6 constitutionality of Idaho laws, rules and practices that allow small in-state beer producers to self-
7 distribute their products directly to Idaho retailers, bars and restaurants without using a separate
8 wholesaler, but prohibit similarly situated out-of-state beer producers from doing so. The Plaintiffs
9 seek a declaratory judgment that this scheme discriminates against out-of-state beer producers in
10 violation of the dormant Commerce Clause. They seek an injunction prohibiting Idaho state
11 officials from enforcing the ban and requiring them to permit out-of-state beer producers to self-
12 distribute their products to Idaho retailers upon terms equivalent to those given to in-state
13 producers.

14 **JURISDICTION**

15 1. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1331 and
16 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the
17 violation of rights and privileges under the United States Constitution.

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

20 **PLAINTIFFS**

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22 3. Consumer Plaintiff Jane Roberts is a resident of Pocatello, Idaho. She is over the
23 age of twenty-one and is legally permitted to purchase, receive, possess, and drink beer at her
24 residence. She is a beer collector and desires to purchase special beers that are difficult to locate.
25 As a consumer of fine and artisanal beer, she would like to purchase craft beer from out-of-state
26 beer producers in Washington which would be added to her beer collection and have those beers
27 shipped to her residence in Idaho, but Idaho laws, rules, and practices prohibit the out-of-state beer
28 producers from doing so.

FIRST CAUSE OF ACTION
(Commerce Clause Violation)

10. Plaintiffs repeat and re-allege paragraphs 1-9 as if fully set out herein.

11. Idaho Code § 23-1003(f) authorizes the issuance of a wholesaler license to a brewery located in Idaho producing fewer than 30,000 barrels annually, which allows it to self-distribute its beer to retailers.

12. The wholesaler privileges are given to Idaho brewers at no additional cost.

13. Self-distribution costs a brewery less than distribution through a separate wholesaler and gives the brewer control over the cost to retailers.

14. Self-distribution ensures that an Idaho brewery can distribute its products to retailers state-wide even if it cannot find a wholesaler willing to carry its beer, and without interruptions caused by independent wholesaler decisions about carrying, marketing, and pricing the beer.

15. Some Idaho breweries have obtained this wholesale license and self-distribute their beer to retailers, restaurants, and bars in Idaho.

16. Plaintiff Dwinell is located in the State of Washington and licensed as a brewer by Washington. It produces fewer than 30,000 barrels of beer annually.

17. Dwinell is not eligible for an Idaho wholesale license under I.C. § 23-1003(f) because it does not hold an Idaho brewer's license under § 23-1003(a), a brewer's retail license under § 23-1003(d), or a brewer's pub license under § 23-1003(e).

18. Plaintiff Varietal Beer Co. is located in the State of Washington and licensed as a brewer in Washington. It produces fewer than 30,000 barrels of beer annually.

19. Varietal Beer Co. is not eligible for an Idaho wholesale license under I.C. § 23-1003(f) because it does not hold an Idaho brewer's license under § 23-1003(a), a brewer's retail license under § 23-1003(d), or a brewer's pub license under § 23-1003(e).

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2 20. Dwinell and Varietal Beer Co. are permitted to self-distribute their beer under the
3 laws of the State of Washington.

4 21. The licenses described in paragraphs 19 and 21 are issued only to brewers
5 physically located in Idaho and approved by an Idaho city or county.

6 22. No other Idaho license or permit is available to brewers located outside Washington
7 that would allow them to self-distribute their beer to retailers, restaurants and bars in Idaho without
8 using a separate wholesaler.

9 23. Without a wholesale license, it is unlawful for a brewer to self-distribute its beer to
10 Idaho retailers under I.C. § 23-1055(a), and a person doing so may be charged with a crime under
11 § 23-602. Any criminal conduct on the part of Dwinell and Varietal Beer Co. subjects it to the
12 denial, suspension, revocation or nonrenewal of its Washington license under RCW 66-24-010.

13 24. Wholesalers charge fees to distribute beer, so the use of a separate wholesaler raises
14 the cost of beer to the purchaser and reduces the profit to the brewer.

15 25. Dwinell and Varietal Beer Co. have lost profits because of the ban on direct self-
16 distribution to Idaho retailers.

17 26. Because Idaho brewers can self-distribute their beer to Idaho retailers without
18 incurring the cost of using a separate wholesaler, they have a competitive advantage over similarly
19 situated brewers from other states, including Dwinell and Varietal Beer Co.

20 27. Beer purchased directly from the brewer has economic and business advantages
21 including avoiding the wholesaler cost markup, eliminating the risk that the wholesaler will carry
22 insufficient stock of the beer, facilitating direct communication with the brewery concerning
23 supply issues, and ensuring that the beer will be properly handled and refrigerated between the
24 brewery and the retailer.

25 28. Dwinell and Varietal Beer Co. would distribute their beer directly to Idaho retailers,
26 restaurants, and bars if permitted to do so.
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2 29. Dwinell and Varietal Beer Co. would obtain an Idaho license, submit records, remit
3 Idaho taxes on beer distributed to retailers in the state, and comply with other nondiscriminatory
4 state regulations if required to do so.

5 30. Plaintiffs cannot complete the transactions described in paragraph 28 because Idaho
6 law prohibits them.

7 31. The prohibition against self-distribution by out-of-state beer producers
8 discriminates against out-of-state entities, protects the economic interests of Idaho wholesalers,
9 and shields Idaho brewers from interstate competition in violation of the Commerce Clause of the
10 United States Constitution.

11 32. The prohibition against self-distribution by out-of-state beer producers advances no
12 public health or safety purpose that could not be served by nondiscriminatory alternatives,
13 including monitoring sales at Idaho retailers, and therefore is not protected by the Twenty-first
14 Amendment.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs seek the following relief:

17 A. Judgment declaring that the provisions in I.C. §§ 23-1055(a) and 23-1055(d) that
18 prohibit out-of-state brewers producing fewer than 30,000 barrels of beer annually from selling
19 directly to Idaho retailers are unconstitutional under the Commerce Clause.

20 B. Judgment declaring that the provisions in I.C. §§ 23-1003(d) and 23-1003(e) that limit
21 the issuance of brewer's retail and brewer's pub licenses to breweries located in the state of Idaho
22 are unconstitutional under the Commerce Clause.

23 C. An injunction prohibiting defendants from enforcing those laws against out-of-state
24 brewers and requiring them to allow out-of-state brewers to self-distribute their products to Idaho
25 retailers, restaurants, and bars upon terms equivalent to those imposed on in-state brewers.
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2 D. Plaintiffs do not request that the defendants be enjoined from requiring out-of-state
3 brewers to obtain the same no-cost wholesale license it requires for in-state brewers or comply
4 with the same 30,000 barrel production limit it imposes on in-state brewers.

5 E. Plaintiffs do not request that the State of Idaho be enjoined from collecting any taxes
6 due on beer sold directly from a brewer to a retailer.

7 F. An award of attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988.

8 G. Such other relief as the Court deems appropriate.

9 DATED this 4th day of August, 2023.

10 RACINE OLSON, PLLP

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13 By: /s/ Heidi Buck Morrison
14 HEIDI BUCK MORRISON

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17 DATED this 4th day of August, 2023.

18 EPSTEIN SEIF PORTER & BEUTEL

19
20
21 By: /s/ Robert D. Epstein
22 ROBERT D. EPSTEIN

23 DATED this 4th day of August, 2023.

24 EPSTEIN SEIF PORTER & BEUTEL

25
26 By: /s/ James A. Tanford
27 JAMES A. TANFORD