

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

SCOTT L. BEAU AND WYNCROFT, LLC

PLAINTIFFS

vs.

CASE NO. 4:05CV903 SWW

**ROBERT S. MOORE, JR., IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF ARKANSAS
ALCOHOLIC BEVERAGE CONTROL DIVISION,
AND CARL E. KIRKLAND, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF ARKANSAS
ALCOHOLIC BEVERAGE CONTROL
ENFORCEMENT DIVISION**

DEFENDANTS

ANSWER

Come now Defendants, by and through the undersigned counsel, and for their Answer, state:

1. Defendants deny the allegations set forth in Plaintiffs' "Introductory" paragraph on pages one and two of the Complaint.
2. Paragraphs 1-2 of the Complaint are jurisdictional in nature and do not require a response from Defendants. Insofar as paragraphs 1-2 allege that this action is properly before this Court, that this Court has subject matter jurisdiction, that a valid cause of action has been stated, or that Plaintiffs are entitled to any relief, it is denied.
3. There are no paragraphs 3-5 in the Complaint.
4. Paragraphs 6-8 describe the Plaintiffs to this action. Defendants are without knowledge to admit or deny the allegations of paragraphs 6-8, and therefore, deny the same.

5. Paragraphs 9-11 describe the Defendants to this action. Insofar as paragraphs 9-11 allege that Defendants are proper parties, that a valid cause of action has been stated, or that Plaintiffs are entitled to any relief from these Defendants, they are denied.
6. With regard to the allegations contained in paragraph 12 of the Complaint, Defendants admit that they are jointly charged with enforcing the provisions of Arkansas Code Annotated § 3-1-101, et seq. However, Defendants deny that they have the authority to impose or collect taxes, which is reserved to the Director of the Department of Finance and Administration.
7. Defendants admit the allegations contained in paragraphs 13-14 of the Complaint.
8. With regard to the allegations contained in paragraph 15 of the Complaint, Defendants admit that in-state wineries are allowed to ship native Arkansas wine, purchased at the Arkansas winery, by common carrier or appropriate parcel service directly to a consumer within the State of Arkansas. Defendants deny the remaining allegations of paragraph 15 of the Complaint.
9. Defendants admit the allegations contained in paragraph 16 of the Complaint except to the extent that Plaintiffs reference a farm winery license. There is no such license in the State of Arkansas.
10. Defendants admit the allegations contained in paragraph 17 of the Complaint.
11. Defendants are without knowledge to admit or deny the allegations contained in paragraphs 18-22 of the Complaint, and therefore deny the same.
12. With regard to the allegations contained in paragraph 23 of the Complaint, Defendants admit that Arkansas wineries, if properly licensed, may ship native Arkansas wine, purchased at the Arkansas winery, by common carrier or appropriate

parcel service directly to a consumer within the State of Arkansas. Defendants state that there is no apparent requirement for an out of state consumer to personally visit an Arkansas winery prior to wine being shipped out of the state. Defendants deny the remaining allegations of paragraph 23.

13. Defendants admit the allegations contained in paragraphs 24-26.

14. Defendants are without knowledge to admit or deny the allegations contained in paragraphs 27-28, and therefore deny the same.

15. With regard to the allegations contained in paragraph 29 of the Complaint, Defendants admit that the interstate sale and delivery of wine to retail dealers must occur through an in-state wholesale liquor dealer, and that intrastate sale and delivery of wine to retail dealers may be made by the native winery itself or a wholesaler designated by the winery. Defendants deny the remaining allegations contained in paragraph 29.

16. Defendants deny that Plaintiffs are entitled to any relief from Defendants as set forth in the Request for Relief.

17. All material facts not specifically admitted herein are denied.

18. Affirmatively pleading, Plaintiffs fail to state a cause of action for which relief can be granted.

19. Affirmatively pleading, Defendants do not have the authority to levy or collect taxes, or to enforce all criminal laws regarding the sale of alcoholic beverages, and therefore, Plaintiffs have failed to join necessary parties to this action under Rule 19 of the Federal Rules of Civil Procedure.

20. Affirmatively pleading, Defendants assert that Arkansas laws are presumed constitutional.
21. Affirmatively pleading, Defendants assert that should the Court declare provisions of Arkansas law unconstitutional, the Court cannot declare that all out-of-state wineries may ship directly to consumers or retailers within the State of Arkansas, but rather, must leave the choice of remedy to the Arkansas General Assembly, which will meet again in a regularly scheduled session beginning in January 2007.
22. Affirmatively pleading, Defendants assert that they are protected by principles of sovereign immunity as established in the United States and Arkansas Constitutions as well as principles of statutory immunity as set forth under numerous provisions of law.

WHEREFORE, Defendants, having fully answered Plaintiffs' Complaint, respectfully request that the Court dismiss the Complaint and for all other relief to which they are entitled.

Respectfully Submitted,

MIKE BEEBE
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2005, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

Mr. Philip E. Kaplan pkaplan@kbmlaw.net;nmoler@kbmlaw.net	Mr. James A. Tanford tanford@indiana.edu
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I hereby certify that on August 29, 2005, I mailed the document by United States Postal Service, postage prepaid, to the following:

Mr. Robert D. Epstein
Epstein Cohen Donahoe & Mendes
50 S. Meridian Street, Suite 505
Indianapolis, Indiana 46204

/s/ Sherri L. Robinson
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