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5 UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

6 BLACK STAR FARMS, L.L.C.;)
7 JOHN NORTON;)
GARY FRISCH;)
8 MICHELLE FRISCH;) Civil No. 2:05-cv-2620-PHX-MHM
DAVID MONHEIT; AND)
9 MELISSA MONHEIT,)
) Judge Mary H. Murgia
10 *Plaintiffs*)
vs.)
11)
LEESA BERENS MORRISON,) **AMENDED COMPLAINT**
12 in her official capacity as Director)
of the State of Arizona Department of)
13 Liquor Licenses and Control,)
)
14 *Defendant*)

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16 Plaintiffs make the following allegations on information and belief, except for
17 allegations pertaining to plaintiffs, which are based on personal knowledge.

18 **INTRODUCTION**

19 1. This is a civil rights action seeking a declaratory judgment that Arizona's
20 statutory scheme that prohibits out-of-state wineries from selling and delivering their
21 wine directly to consumers and retailers discriminates against interstate commerce

1 and is unconstitutional, and an injunction prohibiting the defendant from enforcing
2 those laws, under the authority of *Granholt v. Heald*, 125 S.Ct. 1885 (2005).

3 **JURISDICTION AND VENUE**

4 2. The District Court has jurisdiction to hear this case pursuant to 28 U.S.C.
5 §§1331 and 1343(a)(3), which confer original jurisdiction on federal district courts to
6 hear suits alleging the violation of rights and privileges under the United States
7 Constitution.

8 3. This Court has authority to grant declaratory relief pursuant to 28 U.S.C.
9 §§2201.

10 4. Venue is appropriate under 28 U.S.C. § 1391(b).

11 **PARTIES**

12 5. Plaintiff Black Star Farms, L.L.C., is a Michigan Limited Liability Company
13 with its principle place of business in Suttons Bay, Michigan. It is a commercial
14 winery that holds all relevant federal and Michigan permits to manufacture and sell
15 wine in interstate commerce. It is a small winery whose yearly production would
16 qualify it for an Arizona domestic farm winery license if it were located in Arizona
17 and used Arizona fruit.

18 6. Plaintiff John Norton is over the age of 21, a consumer of wine, and a resident
19 of Paradise Valley, Arizona. Plaintiffs Gary Frisch, Micelle Frisch, David Monheit,
20 and Melissa Monheit are over the age of 21, consumers of wine, and residents of
21 Scottsdale, Arizona. These plaintiffs will hereafter be referred to as the “consumer

1 plaintiffs.”

2 7. Defendant Leesa Berens Morrison is the Director of the Arizona Department
3 of Liquor Licenses and Control, and has the authority to administer the provisions of
4 the Arizona Revised Statutes relating to alcoholic beverages, including the statutes
5 challenged in this case.

6 8. Defendant Morrison is sued in her official capacity.

7 **COMMERCE CLAUSE VIOLATION COUNT I:**
8 **DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH**
9 **RESPECT TO SALES TO CONSUMERS**

9 9. In the state of Arizona, an in-state winery may sell its wine directly to
10 consumers without going through a separate wholesaler and retailer, if the winery
11 obtains a domestic farm winery license from defendant.

12 10. In the state of Arizona, an in-state winery may deliver its wine directly to
13 consumers’ residences in unlimited quantities, without regard to whether the
14 purchaser was physically present at the winery at the time of the order, if the winery
15 obtains a domestic farm winery license from defendant.

16 11. The defendant will not issue a domestic farm winery license to Black Star
17 Farms or any other out-of-state winery that is not located in Arizona and does not
18 make wine from Arizona fruit.

19 12. Black Star Farms and other wineries located outside the state of Arizona are
20 prohibited by the defendant and by Arizona law from selling their wine in Arizona
21 directly to consumers without going through a separate wholesaler and retailer.

1 13. Black Star Farms and other wineries located outside the state of Arizona are
2 prohibited by the defendant and by Arizona law from shipping more than 2 cases of
3 wine per year to a consumer's residence, and may ship only wine purchased while the
4 customer was physically present at the out-of-state winery.

5 14. The consumer plaintiffs want to buy wine in quantities greater than 2 cases
6 per year per winery, directly from out-of-state wineries such as Black Star Farms, by
7 catalog, Internet and telephone order, and in person on the wineries' premises, and
8 have the wine delivered to their residences. They are willing to pay all taxes on such
9 purchases.

10 15. Black Star Farms produces bottled wine for commercial sale, and wants to
11 sell its wine directly to consumers in Arizona such as the consumer plaintiffs, by
12 catalog, Internet and telephone ordering, and in face-to-face transactions on its
13 premises, and to ship the wine to the customers' residences in Arizona.

14 16. Black Star Farms has previously received requests from residents of the state
15 of Arizona to sell, deliver and ship wine to them.

16 17. Plaintiffs cannot complete the transactions described in paragraphs 14-16,
17 because the laws of Arizona prohibit them.

18 18. If plaintiffs were permitted to complete the transactions described in
19 paragraphs 14-16, they would comply with all nondiscriminatory laws and
20 regulations concerning permits, licenses, labeling, reporting, proof of age, and
21 payment of taxes.

1 19. The laws of the state of Arizona treat interstate sales and delivery of wine to
2 adults differently from intra-state sales and delivery of wine to adults, discriminate
3 against out-of-state wineries, and provide economic advantages and protection to in-
4 state wineries, all in violation of the Commerce Clause of the United States
5 Constitution.

6 **COMMERCE CLAUSE VIOLATION COUNT II:**
7 **DISCRIMINATION AGAINST OUT-OF-STATE WINERIES WITH**
8 **RESPECT TO SALES TO LICENSED RETAILERS**

9 20. In the state of Arizona, an in-state winery may sell, deliver and ship its wine
10 directly to persons licensed to sell wine at retail, including restaurants and liquor
11 stores, without having to sell its wine through a wholesaler, if the winery obtains a
12 domestic farm winery license from the defendant.

13 21. The defendant will not issue a domestic farm winery license to Black Star
14 Farms or any other out-of-state winery that is not located in Arizona and does not
15 make wine from Arizona fruit.

16 22. Black Star Farms and other wineries located outside the state of Arizona may
17 not sell, deliver or ship their wine directly to persons licensed to sell wine at retail,
18 but may only sell their wine through a wholesaler.

19 23. Black Star Farms produces bottled wine for commercial sale. It wants to
20 offer to sell its wine directly to persons licensed to sell wine at retail in Arizona, but
21 is prohibited by the defendant and by Arizona law from doing so.

22 24. If Black Star Farms were permitted to sell and deliver its wine directly to

1 persons licensed to sell wine at retail in Arizona, it would comply with all
2 nondiscriminatory laws and regulations concerning permits, licenses, reporting,
3 labeling, proof of age, and payment of taxes.

4 25. The laws of the state of Arizona treat interstate sales and delivery of wine to
5 persons licensed to sell wine at retail in Arizona differently from intra-state sales and
6 delivery of wine to persons licensed to sell wine at retail in Arizona, discriminate
7 against out-of-state wineries, and provide economic advantages and protection to in-
8 state wineries, all in violation of the Commerce Clause of the United States
9 Constitution.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiffs seek the following relief:

12 A. Judgment declaring the Arizona statutory scheme that prohibits out-of-state
13 wineries from selling, delivering, and shipping their wine directly to consumers and
14 persons licensed to sell wine at retail is unconstitutional because it discriminates
15 against interstate commerce in violation of the Commerce Clause of the United States
16 Constitution.

17 B. Judgment declaring unconstitutional and enjoining the enforcement of those
18 portions Ariz. Rev. Stat. §§ 4-202(A), 4-203.04, 4-243.01, and 4-244(7) that prohibit
19 out-of-state wineries from selling, delivering and shipping wine directly to consumers
20 and persons licensed to sell wine at retail in Arizona and that place burdens and limits
21 on those sales and deliveries.

1 C. Plaintiffs do not request that the defendant or any state official be enjoined
2 from collecting any tax due on the sale of wine.

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

5 E. Such other relief as the Court deems appropriate to afford Plaintiffs full
6 relief.

7 Dated: September 23, 2005.

Respectfully submitted by

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/s/ Kent M. Nicholas

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Motion to Appear Pro Hac Vice pending

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