

FILED ELECTRONICALLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

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|-----------------------------|---|--------------------------------|
| HUBER WINERY, et. al. |) | |
| |) | |
| PLAINTIFFS, |) | |
| |) | |
| vs. |) | CIVIL ACTION NO. 3:05-cv-289-S |
| |) | |
| LAJUANA S. WILCHER, et. al. |) | |
| |) | |
| DEFENDANTS |) | |
| _____ |) | |

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiffs, Huber Winery, a division of Huber Orchards, Inc., William G. Schneider, Jr. and John D. Reilly, Jr. (“Plaintiffs”), by counsel, respectfully moves the Court, pursuant to Fed.R.Civ.P. 15(a) for leave to file their Amended Complaint, a copy of which is attached hereto as Exhibit A. Plaintiffs wish to amend their Complaint to add a new party plaintiff, Cherry Hill Vineyards, LLC., d/b/a Cherry Hill Winery (“Cherry Hill Winery”).

As the Court is aware, this case centers around the question whether Ky. Rev. Stat. §§ 243.032, 243.155, 243.156 and 244.165 violate the United States Constitution’s Commerce Clause with respect to out-of-state vintners in light of the Supreme Court’s recent decision in Granholm v. Heald, 544 U.S. ---, 125 S.Ct. 1885, --- L.Ed.2d --- (2005). As the Court is also aware, the State Defendants have moved to dismiss this action based upon their assertion that Huber Winery lacks standing because of certain restrictions against interstate sales found in the Indiana liquor licensing statutes.

While Plaintiffs believe they have sufficiently demonstrated that dismissal is inappropriate based upon Huber's federal license, they nevertheless wish to ensure the disposition of this case on the merits by adding another out-of-state winery plaintiff which cannot be claimed by the State Defendants or Intervening Defendant to have similar licensure issues. Cherry Hill Winery is just such an out-of-state winery.

As Plaintiffs allege in their proposed Amended Complaint, Cherry Hill Winery owns and operates a winery in Rickreall, Oregon. Plaintiffs' proposed Amended Complaint further alleges that Cherry Hill Winery would qualify for licensure as either a small winery or farm winery if it were located in Kentucky. Finally, Plaintiffs' proposed Amended Complaint alleges that Cherry Hill Winery holds all necessary Oregon and federal licenses and permits necessary to manufacture and sell wine in interstate commerce.

The determination of whether to allow the amendment of pleadings rests with the sound discretion of the Court. See Wallace Hardware Co., Inc. v. Abrams, 223 F.3d 382 (6th Cir. 2000). In ascertaining the propriety of allowing amended pleadings, Sixth Circuit case law adheres to the policy of ensuring the disposition of cases on their merits. See McHenry v. Ford Motor Co., 269 F.2d 18 (6th Cir. 1959). Accordingly, the Court should liberally permit the amendment of pleadings in order to allow a disposition on the merits where no prejudice or disadvantage is suffered by the opposing side. See Cooper v. American Emp. Ins. Co., 296 F.2d 303 (6th Cir. 1961).

In this instance, permitting the Plaintiffs to amend their Complaint to add Cherry Hill Winery will promote the purposes of Rule 15, and the policies traditionally followed in the Sixth Circuit. Permitting Plaintiffs leave to add Cherry Hill Winery as an additional plaintiff

will eliminate the procedural standing issue raised by the State Defendants in their Motion to Dismiss, and will assure a proper disposition of this action on the merits.

Further, permitting Plaintiffs leave to add Cherry Hill Winery will not unduly prejudice either the State Defendants or Intervening Defendant with respect to the merits of this action. Such is the case because the question of Huber Winery's standing was the primary thrust of the State Defendants' and Intervening Defendant's opposition to Plaintiffs' Motion for Judgment on the Pleadings, not their denial of Plaintiffs' allegation that the Kentucky statutes at issue violate Granholm and the Commerce Clause. The presence of Cherry Hill Winery as a new plaintiff does not change the tenor of Plaintiffs' allegations with respect to the constitutionality of the subject Kentucky statutes, nor will it impact the disposition of Plaintiffs' Motion for Judgment on the Pleadings. In addition, Plaintiffs are moving to amend their Complaint within the time period mutually agreed to by the State Defendants and Intervening Defendant in the Joint Report of their Rule 26(f) planning meeting.

For the reasons set forth above, Plaintiffs respectfully move the Court to enter the attached Order.

Dated: September 28, 2005.

Respectfully submitted,

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/s/ J. Gregory Troutman

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served either electronically or by United States mail on this 28th day of September, 2005 to:

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