

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

HUBER WINERY, et al.,)
)
 Plaintiffs,)
)
vs.)
)
LAJUANA S. WILCHER, et al.)
)
 Defendants)
_____)

Civil Action No. 3:05-cv-289-S

PLAINTIFFS’ REPLY
TO DEFENDANTS’ AND WHOLESALERS’ MEMORANDA IN OPPOSITION
TO PLAINTIFFS’ MOTION TO DISPENSE WITH THE RULE 16 AND 26
PRETRIAL PROCEDURES

Plaintiffs, Huber Winery, a division of Huber Orchards, Inc., William G. Schneider, Jr. and John D. Reilly, Jr. (collectively “Plaintiffs”), by counsel, respectfully submit the foregoing Reply Memorandum in response to the Memoranda filed by the Defendants, Lavoyed Hudgins and Lajuana Wilcher (collectively “State Defendants”) and Intervening Defendant, Wine and Spirits Wholesalers of Kentucky, Inc. (“Kentucky Wholesalers”) in Response and Opposition to Plaintiff’s Motion to Dispense with the Rule 16 and 26 pretrial procedures. For the reasons set forth below, as well as the reasons set forth in Plaintiffs’ Motion, the Court should enter an Order which dispenses with the Rule 16 and 26 pretrial procedures.

Recognizing that this case purely involves a question of law which would most likely be decided on a dispositive motion, Plaintiffs moved the Court on August 15, 2005 to

dispense with the Rule 16 and 26 pretrial procedures. See Docket Entry #19. On August 16, 2005, the Court issued an Order referring this matter to Magistrate Judge Moyer, and establishing dates for the Rule 16 and 26 pretrial procedures. See Docket Entry #20. In their Response, the State Defendants and Kentucky Wholesales have equated the Court's issuance of this Order as constituting its denial of the relief sought by Plaintiffs. Obviously, the State Defendants and Kentucky Wholesalers discount the fact that it is equally plausible the Court simply entered its August 16, 2005 Order in the ordinary course of its operations without being aware of Plaintiffs' Motion. In any event, the relief sought by Plaintiffs should be granted.

The seminal issue to be decided in this case is whether Kentucky's statutory scheme which prohibits out-of-state wineries from selling wine directly to consumers and retailers, while permitting in-state wineries to do so, is unconstitutional on its face under Granholm v. Heald, 125 S.Ct. 1885 (2005). This is a pure question of law. Contrary to the suggestion of the Kentucky Wholesalers, this is not a case in which the Plaintiffs' have sought to dispense with the Rule 16 and 26 pretrial procedures as a means of "rocket docketing" this case. Given this case purely involves a question of law, Plaintiffs sought to dispense with the pretrial procedures as a means of fostering judicial economy and based upon a good faith belief that this matter will be adjudicated upon motion without the necessity of trial.

Further, the State Defendants' objection based upon their desire to take discovery is a pretext, and equally unfounded. Again, this matter involves an issue of law which the Court can decide simply by viewing the pertinent Kentucky statutes side-by-side with the Granholm decision. No amount of discovery which the State Defendants propose to take

will change that fact, or in any way affect the Court's determination of the constitutionality of the pertinent Kentucky statutes.

Plaintiffs perceive the **only** way the Rule 16 and 26 pretrial procedures will ever be germane to this case is if the Court overrules their Motion for Judgment on the Pleadings. Then, and only then, would this case proceed in a typical fashion like other civil actions. Given these facts, judicial economy is best served by dispensing with the Rule 16 and 26 pretrial procedures.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Plaintiffs Motion to Dispense, the Court should enter an Order granting such Motion.

Dated: September 8, 2005.

Respectfully submitted

MORRIS, GARLOVE, WATERMAN &
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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 8th day of September, 2005 to:

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