

**FILED ELECTRONICALLY**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION  
NO. 3:05-cv-00289-CRS

HUBER WINERY, et al

PLAINTIFFS

v.

LaJUANA S. WILCHER, et al

DEFENDANTS

and

WINE AND SPIRITS WHOLESALERS  
OF KENTUCKY, INC.

INTERVENOR DEFENDANT

**STATE DEFENDANTS' MOTION TO DISMISS**

Come Defendants, LaJuana S. Wilcher and Lavoyed Hudgins, in their official capacities as Secretary of the Environmental and Public Protection Cabinet, and Executive Director of the Kentucky Office of Alcoholic Beverage Control, respectively (hereafter collectively referred to as "State Defendants"), by counsel, and for their Motion to Dismiss, state as follows:

**ORAL ARGUMENT**

Pursuant to LR 7.1(f), Defendants request an oral argument to better elucidate the reasons why the Court should dismiss Plaintiffs' Complaint.

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Defendants raise and argue the subject matter jurisdiction defenses of standing and ripeness, as well as the doctrine of abstention in their Response to Plaintiffs' Motion for Judgment on the Pleadings. That Response, Introduction, Statement of the Case and Argument Parts I, II and III, are hereby incorporated by reference into this motion to serve as the memorandum of law in support. This Motion to Dismiss takes precedence over Plaintiffs' Motion for Judgment on the Pleadings, as the Court must ensure it has subject matter jurisdiction

over the suit, before proceeding on the merits. *See Nationwide Mutual Ins. Co. v. Cisneros*, 52 F.3d 1351, 1361 (6<sup>th</sup> Cir. 1995)(holding that all Courts have an obligation to determine if subject matter jurisdiction is present). Furthermore, at a minimum, the jurisdictional issues raised by Indiana law may require further discovery related to whether Indiana law permits shipment of wine into Kentucky. State Defendants reserve the right to file a Reply on Parts I, II and III of the Argument portion of their Response to Plaintiffs' Motion for Judgment on the Pleadings as these parts are the subject of this Motion to Dismiss.

WHEREFORE, for the reasons stated in that Response, Defendants ask that the Complaint against them be dismissed with prejudice, each side to bear their own costs.

Respectfully submitted,

*s/ Douglas L. McSwain*

Douglas L. McSwain

Andrew DeSimone

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 1, 2005, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send a notice of electronic filing to the following:

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I further certify that I mailed the foregoing document and the notice of electronic filing by first class mail to the following non-CM/ECF participants:

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