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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

DONALD H. BESKIND, KAREN BLUESTEIN, )  
MICHAEL D. CASPER, SR., MICHAEL Q. MURRAY, )  
D. SCOTT TURNER, MICHAEL J. WENIG, MARY A. )  
WENIG, and OAKSTONE WINERY, INC., )

Plaintiffs )

vs. )

JAMES B. HUNT, JR., Governor of North Carolina; )  
MIKE EASLEY, Attorney-General of North Carolina; )  
DAVID E. KELLY, Secretary of the North Carolina )  
Department of Crime Control and Public Safety; and )  
GEORGE BASON, Chairman of the North Carolina )  
Alcoholic Beverage Control Commission, all )  
in their Official Capacities, )

Defendants )

CAUSE NO. 3:00-CV-258-MU

SECOND AMENDED CIVIL COMPLAINT

Plaintiffs make the following allegations for their Second Amended Complaint based upon information and belief, except for the allegations pertaining to Plaintiffs and their counsel, which are based upon personal knowledge.

INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1083 and the Commerce Clause of the United States Constitution, Art. 1, § 8, challenging the constitutionality of North Carolina statutes, including N.C.G.S. §§18B-102, 18B-102.1, 18B-109, and 18B-1114, which prohibit out-of-state retailers and wineries from delivering wine directly to Plaintiffs at their residences within the State of North Carolina. Plaintiffs seek a declaratory judgment that these

statutes as applied to shipments originating out of state violate the Commerce Clause of the United States Constitution, and an injunction against their enforcement.

2. N.C.G.S. § 18B-102.1 provides in relevant part:

(a) It is unlawful for any person who is an out-of-state retail or wholesale dealer in the business of selling alcoholic beverages to ship or cause to be shipped any alcoholic beverage directly to any North Carolina resident who does not hold a valid wholesaler's permit under Article I 1 of this Chapter.

(e) Whoever violates the provisions of this section shall be guilty of a Class I felony and shall pay a fine of not more than ten thousand dollars (\$10,000).

3. N.C.G.S. § 18B-109 provides in relevant part:

(a) **General Prohibition.** -- No person shall have any alcoholic beverage mailed or shipped to him from outside this State unless he has the appropriate ABC permit.

4. N.C.G.S. § 18B-1114 provides:

The holder of a nonresident wine vendor permit may sell, deliver, and ship unfortified and fortified wine in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The unfortified and fortified wine must come to rest at the licensed premises of a wine wholesaler in this State before being resold to a retailer.

#### JURISDICTION

5. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiffs' rights and privileges to engage in interstate commerce under the Commerce Clause of the United States Constitution without undue interference from state law.

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

7. This court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

## PLAINTIFFS

8. Plaintiff, Donald H. Beskind, is a resident of Durham County, North Carolina.
9. Plaintiff, Karen Bluestein, is a resident of Wake County, North Carolina.
- [10.](#) Plaintiff, Michael D. Casper, Sr., is a resident of Brunswick County, North Carolina.
- [11.](#) Plaintiff, Michael Q. Murray, is a resident of Guilford County, North Carolina.
- [12.](#) Deleted.
- [13.](#) Plaintiff, D. Scott Turner, is a resident of Grand Rapids, Michigan. .
- [14.](#) Plaintiff, Michael J. Wenig, is a resident of Guilford County, North Carolina.
- [15.](#) Plaintiff, Mary A. Wenig, is a resident of Guilford County, North Carolina.
- [16.](#) The sale of wine is permitted in said counties and has not been prohibited or restricted [under](#) the North Carolina ABC laws.
17. Plaintiffs are all over twenty-one (21) years of age and legally permitted to purchase, receive, possess and drink wine.
18. Plaintiffs are all regular purchasers and consumers of wine, including fine and rare wines.
19. Plaintiffs intend to purchase bottled wine from out-of-state retailers and wineries, and to have those wines shipped to their residences in North Carolina if state law restrictions against interstate direct shipments are removed or declared unconstitutional.
20. Plaintiff, Oakstone Winery, [Inc. is](#) an out-of-state winery located in Fair Play, Eldorado County, California.
21. Plaintiff, Oakstone Winery intends to ship wines directly to customers' residences in North Carolina if state law restrictions against interstate direct shipments are removed or declared unconstitutional.

22. **Plaintiffs intend to pay all excise or other taxes that may be due on such interstate shipments which has not been paid by the supplier.**

#### **DEFENDANTS**

23. **Defendant are sued in their official capacities.**

24. **Defendant, James B. Hunt, Jr., is Governor of North Carolina and has the duty to execute all state laws, including the statutes challenged herein, and to supervise the conduct of the other Defendants.**

25. **Defendant, Mike Easley, is Attorney General of North Carolina who represents all state agencies and has the authority to prosecute violations of the statutes challenged herein.**

26. **Defendant, George Bason, is Chairman of the North Carolina Alcoholic Beverage Control Commission, and has the duty to enforce the provisions of the ABC laws, including the statutes challenged herein.**

27. **Defendant, David E. Kelly, is Secretary of the North Carolina Department of Crime Control and Public Safety, and has the duty to direct and supervise the Alcohol Law Enforcement Division which has the duty to enforce the provisions of the ABC laws, including the statutes challenged herein.**

28. **Defendants are acting under color of state law when they enforce or supervise the enforcement of the statutes challenged herein.**

#### **COMMERCE CLAUSE VIOLATION - COUNT I**

29. **Plaintiffs want to and intend to purchase bottled wines from retailers and wineries outside the state of North Carolina and have those wines shipped directly to their residences and to other residences within North Carolina.**

30. Some wines Plaintiffs want to purchase and have delivered are not available and cannot be ordered through wine vendors in North Carolina.

31. Plaintiffs are unable to purchase wine from out-of-state retailers and wineries and have it shipped to their residences and other locations within North Carolina because out-of-state retailers and wineries will not ship wines directly to residents of North Carolina.

32. Out-of-state retailers and wineries will not ship wines directly to residents of North Carolina. because state ABC laws, including N.C.G.S. §§ 1813-102.1, 1813-109 and 1813-1114, prohibit such shipments.

33. Because they have not been able to obtain some wines of their choice from out-of-state sources, Plaintiffs have been unable to purchase and collect some valuable wines or especially desirable wines.

34. Because they have not been able to obtain some wines of their choice from out-of-state sources, Plaintiffs have had to purchase and consume less desirable wines available locally.

35. Plaintiffs have not consumed less wine because of the direct shipment ban.

36. Out-of-state wine retailers and wineries will sell wine to Plaintiffs and deliver it to their residences and other locations within North Carolina if the laws prohibiting such interstate shipments are repealed or declared unconstitutional.

37. N.C.G.S. §§ 1813-102.1,1813-109, and 1813-1114 only apply to and regulate interstate delivery of wine and other alcoholic beverages directly to Plaintiffs; they do not apply to intrastate delivery of wine.

38. In-state retailers and wineries are permitted to ship wine directly to the homes of North Carolina residents pursuant to N.C.G.S. §§ 1813-1001(4) and 1813-1101.

39. North Carolina ABC law treats interstate sales and delivery of wine to adults differently from intra-state sales and delivery of wine to adults, discriminates against interstate sales and delivery, reserves to in-state retailers and wineries the exclusive market in wine, and provides a direct economic advantage to in-state wine businesses, all in violation of the Commerce Clause of the United States Constitution.

#### COMMERCE CLAUSE VIOLATION - COUNT II

40. N.C.G.S. § 105-113.80 imposes an excise tax on wine.

41. N.C.G.S. § 18B-111 provides that no person may possess, transport or sell non-tax paid alcoholic beverages.

42. N.C.G.S. § 105-113.83 provides that only a "resident wholesaler or importer" may pay the excise tax on wine.

43. There is no provision or procedure in North Carolina law that allows an out-of-state retailer or winery, or a North Carolina consumer, to pay the excise tax.

44. These statutes effectively makes interstate sales and delivery of wine to adults unlawful while permitting in-state sales and delivery of wine to adults, discriminates against interstate sales and delivery, reserves to in-state businesses the exclusive market in wine, and provides a direct economic advantage to in-state wine businesses, all in violation of the Commerce Clause of the United States Constitution, Article I, § 8.

#### COMMERCE CLAUSE VIOLATION - COUNT III

45. Plaintiff, Oakstone Winery, [Inc. is](#) located in Fair Play, California and produces bottled wine for commercial distribution and sale.

46. Oakstone Winery holds all licenses required by Federal and California law to manufacture, bottle, sell and deliver wine.

47. Oakstone Winery has received requests from North Carolina residents to deliver wine to them.

48. Oakstone Winery would like to deliver wine directly to North Carolina residents, but is prohibited from doing so by North Carolina alcoholic beverage laws.

49. Oakstone Winery would in fact deliver wine to North Carolina residents if it were permitted to do so or the laws prohibiting such deliveries were repealed or declared unconstitutional.

50. If the prohibition against direct shipment is lifted, Oakstone Winery intends to comply with all applicable North Carolina laws concerning permits, licenses, reporting requirements and payment of taxes.

#### REQUEST FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

A. Judgment declaring N.C.G.S. §§ 1813-102.1, 1813-109, and 1813-1114 unconstitutional in violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring N.C.G.S. § 102 unconstitutional in violation of the Commerce Clause of the United States Constitution to the extent that it is used to prohibit out-of-state retailers and wineries from delivering wine directly to adult North Carolina residents.

C. Judgment declaring N.C.G.S. § 105-113.83 unconstitutional in violation of the Commerce Clause of the United States Constitution as applied to prohibit out-of-state wine sellers and in-state buyers from paying the excise tax due on wine sales.

D. Judgment declaring that it is an unconstitutional violation of the Commerce Clause for Defendants to apply other provisions of North Carolina's ABC laws pertaining to permits, residency requirements, and approved lists of wine, in a manner that prohibits out-of-state retailers and wineries from delivering wine directly to adult North Carolina residents.

E. An injunction against Defendants prohibiting them from enforcing the provisions of the North Carolina ABC laws which prohibit or punish the delivery of alcoholic beverages from an out-of-state supplier to an adult North Carolina resident.

F. An injunction against Defendants requiring them to accept excise tax payments from Plaintiffs that are due on wine received directly from out-of-state sources. Plaintiffs do not request that the State be enjoined from collecting any tax due on the sale of wine.

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

H. Such other relief as the court deems appropriate to afford Plaintiffs full relief.

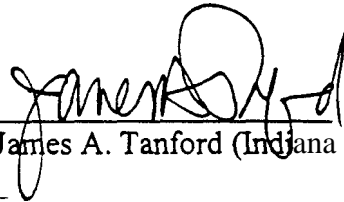
Respectfully submitted:

EPSTEIN & FRISCH



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**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Come now Plaintiffs, by counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, move the Court to grant summary judgment on their Complaint against Defendants. The evidence set forth in Plaintiff s Complaint and in the Affidavits of Plaintiffs as well as the other designated evidence, which are attached hereto and are incorporated herein, establishes that there are no genuine issues of material fact and that the Plaintiffs are entitled to judgment as a matter of law against Defendants.

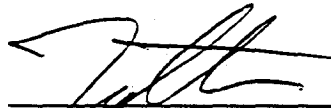
Plaintiffs have challenged the constitutionality of North Carolina General Statutes Sections 1813-102, 1813-102.1, 1813-109, 1813-1114, 1813-1001 and 1813-1101, pertaining to licensing, residency and delivery regulations, individually and collectively, which prohibit direct shipments of wine from out-of-state suppliers to residences within the State of North Carolina. Plaintiffs assert that these Statutes violate the Commerce Clause of the United States Constitution by depriving Plaintiffs under color of law of their constitutional right to engage in interstate commerce without undue interference by state law.

The undisputed facts established by Plaintiffs' Affidavits, the admissions in Defendants' Answer, and other designated evidence, demonstrate that North Carolina General Statutes Sections 1813-102, 1813-102.1, 1813-109, 1813-1114, 1813-1001 and 1813-1101, containing licensing, residency and delivery regulations that affect the distribution of wine, have significantly interfered with Plaintiffs' ability to purchase wine from out-of-state sources. Plaintiffs want to and have attempted to buy wine from out-of-state wineries; auction houses and retailers and have it delivered to North Carolina, but have been unable to do so because the

direct shipment laws prohibit such interstate transactions. North Carolina's Alcoholic Beverage Laws create a monopoly for in-state wine sellers and protect them from interstate competition. For the legal reasons developed in the accompanying brief, this distribution system violates the Commerce Clause by discriminating against interstate wine sales and protecting the economic interests of local merchants. The law is not saved by the Twenty-first Amendment because it does not significantly promote temperance or any other legitimate interest within the scope of that amendment.

WHEREFORE, Plaintiffs respectfully request that the Court grant their Motion for Summary Judgment on their Complaint against Defendants and for all other just and proper relief in the premises.

Respectfully submitted,



Robert D Epstein (Indiana Attorney No. 6726-49)  
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1?staw, Calera, Oakville, Screaming Eagle, and Flumpfack. These wineries are unable to ship their wines to my home in North Carolina.

5. It is my intention to buy from out-of-Aft wineries if the North Carolina law so permits these purchases.

6, If North Carolina Statutes, including N.C.G.S. Sets, 1813-102.1, 18-8-109 and 18B-1114 were enjoined or repealed. I would purchase wines not otherwise available in North Carolina from out-of-statt winezics, retailers and auction houses through direct shipment to my residence in North CarolinaL

7. IF the North Carolina Alcoholic ContrUI Commission will provide appropriate formal procedures I will obtain personal importation licenses, report my purchases, pay taxes, and comply with any other reasonable regulations.

I aMrn under the penalties for peesury that the foregoing representations are true and accurate to the best of my kno\*edgo and belief.

*Donald H. Beskind*

Date Donald H. Beskind

STATE OF NORTH CAROLINA )  
SS:  
COUNTY 01, -L)

Subscribed and sworn to before tae this till, day of GIFIUU, 2001

*Maureen J. [Signature]*  
Notary Public



Commission Expires: 06/19/05

Residing in 6 L9th YL County, State of NO,

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

DONALD H. BESKIND, KAREN BLUESTEIN, )  
MICHAEL D. CASPER, SR., MICHAEL Q. MURRAY, )  
D. SCOTT TURNER, MICHAEL J. WENIG, MARY )  
A. WENIG and OAKSTONE WINERY, INC., )

Plaintiffs

) CAUSE NO: 3:00-CV-258-MU

vs.

JAMES B. HUNT, JR., Governor of North Carolina, )  
MIKE EASLEY, Attorney-General of North Carolina, )  
DAVID E. KELLEY, Secretary of the North Carolina )  
Department of Crime Control and Public Safety, and )  
GEORGE BOSON, Chairman of the North Carolina )  
Alcoholic Beverage Control Commission, all )  
in their Official Capacity, )

Defendants.

)

AFFIDAVIT OF KAREN BLUESTEIN

1. Karen Bluestein, being first duly sworn upon my oath state the following:

1. I am a Plaintiff in the pending lawsuit in the Western District of North Carolina in the matter of *Hatkind et. al vs. Hmr, et. vl.*, Cause Number 3:00-C V 258-MU.

2. I reside in the State of North Carolina and my address is 111 Montauk Point, Carey, North Carolina, 27513. I am currently employed at Cisco.

3. I am a wine consumer and I am over the age of twenty-one (21) years.

4. Prior to the filing of this lawsuit I traveled considerably for both business and pleasure. I visited out-of-state wineries spread across the United States and became aware

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DMSION

DONALD H. BESKIND, KAREN BLUESTEIN,  
NUCHAELD. CASPER, SR., MICHAEL Q. MURRAY,  
D. SCOTT TIJRNRR, MICHAEL J. WENIG, MARY  
A. WENIG and OAKSTONE WINERY, INC.,

Plaintiffs

) CAUSE NO: 3:00-CV-259MU

vs.

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JAMES B. HUNT, IR., Governor of North Carolina, )  
MIKE EASLEY, Attorney-General of North Carolina, )  
DAVID E. KELLEY, Secretary of the North Carolina )  
Department of Crime Control and Public Safety, and )  
GEORGE BASON, Cbairman of the North Carolina )  
Alcoholic Beverage Control Commission, all )  
in their Official Capacities, )

Defendants.

}

AFFIPA v. JT (FF DONALD H. BES D

I, Donald H. Beskind, being first duly sworn upon my oath state the following:

1. I am a Plaintiff in the pending lawsuit in the Western District of North Carolina in *the matter of Resknd et. al. vs., Hunt, et. at., Cause Number 3:00258-:4J.*
2. I reside in the State of North Carolina and ~~my address~~ <sup>my address</sup> is First Union Capital Center, 180 Fayetteville Street Mall, Raleigh, North Carolina, 27601.
3. I am a wine consumer end Ion over the age of twenty-one (21) years.
4. I collect fine wines and I would *like to purchase several out-of-state* wines to *supplement my collection la particular I am interested in purchasing* wines from Girard, Rudd

Estate, Calera, Oakville, Screaming Eagle, and Plumpjack These wineries are unable to ship their wines to my home in North Carolina

5. It is my intention to buy from out-of-state wineries if the North Carolina law so permits these purchases.

6. If North Carolina Statutes, including NCGS Secs, 18B-102.1, 18B-109 and IBB-1114 were enjoined or repealed, I would purchase wines not otherwise available in North Carolina from out-of-state wineries, retailers and auction houses through direct shipment to my residence in North Carolina

7. IF the North Carolina Alcoholic Control Commission will provide appropriate formal procedures I will obtain personal importation licenses, report my purchases, pay taxes, and comply with any other reasonable regulations.

I affirm under the penalties *for perjury that the* foregoing representations are true and accurate to the best of my knowledga and beli of.

*Donald H. Beskind*

Date

Donald H. Beskind

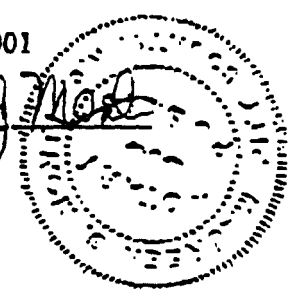
STATE OF NORTH CAROLINA )

SS:

COUNTY 01: L )

Subscribed and sworn to before me this 11 day of July, 2001

Public



Commission Expires. 01

Residing in L County, State of



that there are many out-of-state wineries that produce wines that I would like to purchase. I also became aware that these *wineries, mostly small* farm wineries, are unable to ship these wines to my home in North Carolina.

5. It is my intention to buy from out-of-state wineries if the North Carolina law so permits these purchases.

6. If North Carolina Statutes, including N.C.G.S. Sees. 18B-102.1, 18-B-109 and 18B-1114 were enjoined or repealed, I would purchase wines not otherwise available in North Carolina from out-of-state wineries, retailers and auction houses through direct shipment to my residence in North Carolina.

7. If the North Carolina Alcoholic Control Commission will provide appropriate formal procedures I will obtain personal importation licenses, report my purchases, pay taxes, and comply with any other reasonable regulations.

I affirm under the *penalties for perjury* that the foregoing representations are true and accurate to the best of my knowledge and belief.

-A  
Date

STATE OF NORTH CAROLINA )

SS:

COUNTY OF

Subscribed and sworn to before me this \_\_\_ day of\_, 2001

Notary Public

Commission Expires:      ♣ \_\_\_\_  
Residing in.                      County, State of

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

DONALD H. BESKIND, KAREN BLUESTEIN,  
MICHAEL D. CASPER, SR., MICYAFI Q. MURRAY,  
17. SCOTT TURNER, MICHAEL J. WENIG, MARY  
A. WENIG and OAKSTONE WINERY, TNC.,

Plaintiff§

) CAUSE NO: 3:00-CV-258-MU

vs.

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JAMES B. HUNT, JR, Governor of North Carolina, )  
*MIKE EASLEY*, Attorney-General of North Carolina, )  
DAVID E. KELLEY, Secretary of the North CaroUna )  
Department of Crime Control and Public Safety, and )  
GEORGE AASON, Chairman of the North Carolina )  
Alcoholic Beverage Control Commission, all )  
in their Official Capacities, )

Defendants.

)

AFFIDAVIT OF MICHAEL D. CASPER, SR.

I, Michael D. Casper, Sr., being first duly sworn upon my oath state the following:

1. I am a Plaintiff in the pending lawsuit in the Western District of North Carolina in *the matter of Beskind et al vs. Hunt, et. al., Cause Number 3:00-CV-258-MU.*

2. I reside in the State of North Carolina and my address is 826 Watson Avenue SW, Calabash, North Carolina, 28467.

3. I am a wine consumer and I am over the age of twenty-one (21) years.

4. Because the town in which I live is small and located 80 miles from the nearest city, there is a very small selection of wine locally. Prior to the filing of this lawsuit I became aware

that there are many out-of-state wineries across the United States which produce wines that I would like to purchase. I also became aware that these out-of-state wineries are unable to ship their wines to my home in North Carolina

6. I am interested in purchasing wine such as Orchard Estate, Devil's Rock Riesling, Sterling Winery, and Monterrey Vineyard.

7. It is my intention to buy from out-of-state wineries if the North Carolina law so permits these purchases.

8. If North Carolina Statutes, including N.C.G.S. Secs. 18B-102.1, 18B-109 and 18B-1114 were enjoined or repealed, I would purchase wines not otherwise available in North Carolina from out-of-state wineries, retailers and auction houses through direct shipment to my residence in North Carolina.

9. If the North Carolina Alcoholic Control Commission will provide appropriate procedures I will obtain personal importation licenses, report my purchases, pay taxes, and comply with any other reasonable regulations.

I affirm under the penalties for perjury that the foregoing representations are true and accurate to the best of my knowledge and belief.

ute



Michael D. Casper Sr.