

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

**KAMBIS ANVAR, VINCENT COLAPIETRO, and
MICHELLE DRUM**

Plaintiffs

v.

**ELIZABETH M. TANNER, Director of Department of
Business Regulation, and PETER F. NERONHA,
Attorney General of Rhode Island,**

Defendants

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C.A. NO.: 1:19-cv-00523

DEFENDANTS' AMENDED ANSWER TO PLAINTIFFS' COMPLAINT

Now come Defendants Elizabeth M. Tanner, in her official capacity as Director of the Rhode Island Department of Business Regulation (“DBR”) and Peter F. Neronha, in his official capacity as Rhode Island Attorney General (collectively “Defendants” or “the State”) and hereby file an amended answer pursuant to Fed. R. Civ. P. 15(a)(1)(A) to the Complaint of the Plaintiffs, Kambis Anvar, Vincent Colapietro, and Michelle Drum¹ (collectively “Plaintiffs”), in this civil action as follows:

COMPLAINT

This paragraph of Plaintiffs’ Complaint is an introductory statement to which no response is required. If a response is deemed required, any and all allegations contained in this paragraph are denied.

¹ Michael Osean was named as a Plaintiff in the Complaint, however, by joint stipulation, Mr. Osean has been terminated as a Plaintiff, and his claims have been dismissed with prejudice as to Defendants. See Text Order dated 12/09/19.

INTRODUCTION

This paragraph of Plaintiffs' Complaint is an introductory statement to which no response is required. If a response is deemed required, any and all allegations contained in this paragraph are denied.

JURISDICTION

1. Paragraph 1 of Plaintiffs' Complaint is a legal conclusion to which no response is required.
If a response is deemed required, any and all allegations contained in Paragraph 1 are denied.
2. Paragraph 2 of Plaintiffs' Complaint is a legal conclusion to which no response is required.
If a response is deemed required, any and all allegations contained in Paragraph 2 are denied.

PLAINTIFFS

3. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of Plaintiffs' Complaint and on that basis denies them.
4. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of Plaintiffs' Complaint and on that basis denies them.
5. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of Plaintiffs' Complaint and on that basis denies them.
6. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of Plaintiffs' Complaint and on that basis denies them.

DEFENDANTS

7. Admitted.
8. Admit only that Peter F. Neronha is the Rhode Island Attorney General and that the Rhode Island Attorney General has certain powers, duties, authority, and responsibilities set forth in the Rhode Island Constitution, statutes, and the common law. The State denies any and all remaining allegations in Paragraph 8 of Plaintiffs' Complaint.
9. Admit only that Elizabeth M. Tanner is the Director of the Rhode Island Department of Business Regulation and that R.I. Gen. Laws § 3-2-2 provides, in part, that the DBR "shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes." The State denies any and all remaining allegations in Paragraph 9 of Plaintiffs' Complaint.
10. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of Plaintiffs' Complaint and on that basis denies them.

Commerce Clause Violation

11. Admit only that R.I. Gen. Laws §§ 3-7-1 and 3-7-3 provide, in part, that a retailer's Class A license authorizes the holder to sell and deliver alcohol beverages at retail. The cited statutes speak for themselves and on that basis, the State denies the remaining allegations in Paragraph 11 of Plaintiffs' Complaint.
12. Paragraph 12 of Plaintiffs' Complaint is a legal conclusion to which no response is required. If a response is deemed required, any and all allegations contained in Paragraph 12 are denied.

13. Paragraph 13 of Plaintiffs' Complaint is a legal conclusion to which no response is required. If a response is deemed required, any and all allegations contained in Paragraph 13 are denied.

14. Paragraph 14 of Plaintiffs' Complaint is a legal conclusion to which no response is required. If a response is deemed required, any and all allegations contained in Paragraph 14 are denied.

15. Paragraph 15 of Plaintiffs' Complaint is a legal conclusion to which no response is required. If a response is deemed required, any and all allegations contained in Paragraph 15 are denied.

16. Paragraph 16 of Plaintiffs' Complaint is a legal conclusion to which no response is required. If a response is deemed required, any and all allegations contained in Paragraph 16 are denied.

17. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of Plaintiffs' Complaint and on that basis denies them.

18. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of Plaintiffs' Complaint and on that basis denies them.

19. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of Plaintiffs' Complaint and on that basis denies them.

20. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of Plaintiffs' Complaint and on that basis denies them.

21. Denied.

22. Denied.

23. Admit only that Rhode Island law permits the shipment of an order for alcohol beverages that was personally placed by the purchaser at the manufacturer's premises, to an address in Rhode Island for nonbusiness purposes. The State denies each and every remaining allegation in Paragraph 23 of Plaintiffs' Complaint.

24. Denied.

Request for Relief

WHEREFORE, the State respectfully requests that Plaintiffs' Complaint be dismissed in its entirety; that Judgment enter for the State; that costs and attorneys' fees be awarded to the State and such other and further relief as justice may require.

A. Denied.

B. Denied.

C. Denied.

D. Denied.

E. Denied.

F. Denied.

WHEREFORE, Defendants Elizabeth M. Tanner, in her official capacity as Director of the Rhode Island Department of Business Regulation ("DBR") and Peter F. Neronha, in his official capacity as Rhode Island Attorney General (collectively "Defendants" or "the State") respectfully request that Plaintiffs' Complaint be denied and dismissed with prejudice, costs and fees awarded to these Defendants.

AFFIRMATIVE DEFENSES

Elizabeth M. Tanner, in her official capacity as Director of the Rhode Island Department of Business Regulation (“DBR”) and Peter F. Neronha, in his official capacity as Rhode Island Attorney General (collectively “Defendants” or “the State”) hereby assert the following affirmative defenses in response to the allegations in Plaintiffs’ Complaint:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint fails to state a claim upon which relief can be granted in that it fails to set forth a legally sufficient factual basis for a judgement against the State.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint does not present any justiciable issues and Plaintiffs’ claims are not ripe.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs lack standing.

FOURTH AFFIRMATIVE DEFENSE

The State enjoys the benefit of the State’s status as sovereign, together with all privileges and immunities which inure to said sovereign status.

FIFTH AFFIRMATIVE DEFENSE

The legislation at issue enjoys the presumption of validity and, in fact, was duly enacted and does not violate any provisions of the Federal or State constitutions.

SIXTH AFFIRMATIVE DEFENSE

The legislation at issue is congressionally and constitutionally authorized and is thus exempt from the Dormant Commerce Clause.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that the State is not otherwise immune from liability, which liability is expressly denied, any claims by Plaintiffs of prejudgment interest, post-judgment interest and/or costs are barred by sovereign immunity pursuant to statutory and common law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to attorney's fees and/or costs under Federal or State law.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to exhaust administrative remedies.

TENTH AFFIRMATIVE DEFENSE

The State reserves the right to assert such other and further defenses not specifically asserted herein.

WHEREFORE, the State respectfully requests that Plaintiffs' Complaint be dismissed in its entirety; that Judgment enter for the State; that costs and attorneys' fees be awarded to the State and such other and further relief as justice may require.

DEFENDANTS,
Defendants, Elizabeth M. Tanner, in her
official capacity as Director of the Rhode
Island Department of Business Regulation,
and Peter F. Neronha, in his official capacity
as Rhode Island Attorney General,

/s/ Andrea M. Shea

Andrea M. Shea # 9702
Lauren E. Hill, #9830
Special Assistant Attorneys General
150 South Main Street
Providence, RI 02903
Tel (401) 274-4400
Fax (401) 222-2995

CERTIFICATION

I hereby certify that I e-filed the within through the ECF filing on this 3rd day of January, 2020 and that it is available for viewing and downloading. I further certify that a copy has been sent via the ECF filing system on this date.

/s/ Colleen Cole