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11 *Attorneys for plaintiffs Orion Wine Imports and Peter Creighton*

12 IN THE UNITED STATES DISTRICT COURT  
 13 EASTERN DISTRICT OF CALIFORNIA

14 ORION WINE IMPORTS, LLC and )  
 PETER E. CREIGHTON, ) No. 2:18-cv-01721-KJM-DB  
 15 *Plaintiffs* )

16 vs )

17 JACOB APPLESMITH, in his official )  
 capacity as Director of the California ) Date: September 19, 2018  
 18 Dept. of Alcoholic Beverage Control ) Time: 10:00 am  
*Defendant* ) Ctroom: 3  
 19 Judge: Hon. Kimberly J. Mueller

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**JOINT STATUS REPORT**

1. SERVICE OF PROCESS

**Plaintiffs' position:** All parties have been served.

**Defendant's position:** Defendant agrees.

2. JURISDICTION AND VENUE

**Plaintiffs' position:** Venue is proper in the Eastern District of California.

**Defendant's position:** Defendant agrees.

3. CONSTITUTIONAL NOTICE

**Plaintiffs' position:** The action calls into question the constitutionality of a state law. State officials represented by the Attorney General of California are parties, so no additional notices are required.

**Defendant's position:** At this time, Defendant agrees that no additional notices are required.

4. JOINDER OF ADDITIONAL PARTIES AND AMENDMENT OF PLEADINGS

**Plaintiffs' position:** No additional parties need to be joined. California Beer and Beverage Distributors and Wine and Spirits Wholesalers of California, two trade associations representing California wholesalers, have moved to appear as amici, which has been consented to by the parties if the Court were to allow it.

**Defendant's position:** At this time, defendant agrees.

5. SIMPLIFICATION OF ISSUES

**Plaintiffs' position:** Plaintiffs do not anticipate that the parties can agree on any simplification or elimination of the issues.

**Defendant's position:** In the event that Defendant's pending motion to dismiss is not granted in its entirety and/or Plaintiffs' motion for leave to file a second amended complaint is granted, Defendant may file a new motion to dismiss, as appropriate. Defendant may also file

1 a motion for summary judgment/adjudication, as appropriate. These potential developments may  
2 result in a simplification of issues.

3 6. FILING AND SERVICE REQUIREMENTS

4 **Plaintiffs' position:** The parties do not anticipate any variance from the usual filing  
5 and service requirements.

6 **Defendant's position:** At this time, Defendant agrees.

7 7. PENDING AND ANTICIPATED MOTIONS

8 **Plaintiffs' position:** Two motions are pending and both have been set for September  
9 19, 2018: (1) The defendant has filed a motion to dismiss the complaint, and (2) Plaintiffs have  
10 filed a motion for leave to file a second amended complaint to correct two typographical errors.  
11 These motions are interrelated. Plaintiffs contend that both motions may be decided on  
12 September 19. Plaintiff contends both parties have had adequate opportunity to address the  
13 merits of the claim of discrimination against out-of-state wine importers, and the motion to  
14 amend the complaint is a technical one, not a substantive one. In the event that the motion to  
15 dismiss is not granted, the parties anticipate that the case will be decided on cross-motions for  
16 summary judgment.

17 **Defendant's position:** In the event that Defendant's pending motion to dismiss is  
18 not granted in its entirety and/or Plaintiffs' motion for leave to file a second amended complaint  
19 is granted, Defendant may file a new motion to dismiss, as appropriate. Defendant may also file  
20 a motion for summary judgment/adjudication, as appropriate. Defendant will reassess his  
21 position following the Court's rulings on the aforementioned motions.

22 8. DISCOVERY ISSUES

23 **Plaintiffs' position:** Plaintiffs anticipate minimal discovery because the case is  
24 primarily a matter of constitutional law. Plaintiffs plan on no depositions and no expert  
25 witnesses, but will file written discovery requests.

1           **Defendant's position:** Defendant believes that discovery, let alone any discussion  
2 regarding the scope of and schedule for discovery, is premature at this time given the pending  
3 motion to dismiss and Defendant's right to review and respond to Plaintiffs' second amended  
4 complaint, in the event leave is granted by the Court. Allowing discovery to proceed prior to the  
5 resolution of Defendant's currently pending and potentially forthcoming motions to dismiss will  
6 place an undue burden and potentially further unnecessary expense on Defendant. Further, there  
7 is no compelling need to conduct discovery prior to the resolution of Defendant's currently  
8 pending and potentially forthcoming motions to dismiss. Should Plaintiffs proceed with  
9 discovery prior to the Court ruling on Defendant's motions to dismiss, Defendant will ask this  
10 Court for an order staying discovery until after rulings on the motions to dismiss.

11           9. EVIDENTIARY DISPUTES

12           **Plaintiffs' position:** Until an answer has been filed and discovery completed, it is  
13 not possible to anticipate whether there will be any evidentiary disputes.

14           **Defendant's position:** At this time, Defendant agrees.

15           10. ADMISSIONS AND DOCUMENT AUTHENTICITY

16           **Plaintiffs' position:** Because the case will probably be decided on summary  
17 judgment, stipulations of fact and document authenticity are unnecessary.

18           **Defendant's position:** At this time, Defendant does not anticipate any issues arising  
19 regarding evidentiary admissions or document authenticity.

20           11. FURTHER PROCEEDINGS

21           **Plaintiffs' position:** Plaintiffs do not anticipate that any further conferences will be  
22 necessary other than a hearing on cross-motions for summary judgment.

23           **Defendant's position:** Defendant proposes a postponement or further status  
24 conference following the Court's ruling on Defendant's motion to dismiss and/or Defendant's  
25 response to the second amended complaint, in the event leave is granted to Plaintiffs.

26           12. MODIFICATION OF PRETRIAL PROCEDURES

1           **Plaintiffs' position:** No modification of standard pretrial procedures is necessary,  
2 although the case will probably take less time to develop than a typical case because there will be  
3 fewer factual issues.

4           **Defendant's position:** Defendant believes that scheduling dates is premature at this  
5 time given the current lack of an operative complaint and the parties' pending motions.

6           13. ORDER REGARDING SEPARATE TRIALS

7           **Plaintiffs' position:** The case can be decided in one hearing on cross-motions for  
8 summary judgment, and separate hearings or trials are not needed.

9           **Defendant's position:** Defendant does not believe any orders regarding the separation  
10 of triable issues are necessary, at this time.

11           14. ORDER REGARDING TRIAL EVIDENCE

12           **Plaintiffs' position:** No trial orders are needed at this time.

13           **Defendant's position:** Defendant agrees.

14           15. SPECIAL PROCEDURES DUE TO COMPLEXITY

15           **Plaintiffs' position:** This case involves the constitutionality of a state law and should  
16 be heard by the District Court Judge. The parties do not consent to a Magistrate Judge.

17           **Defendant's position:** Defendant agrees.

18           16. SETTLEMENT PROSPECTS

19           **Plaintiffs' position:** There are no prospects for settlement. The Defendant does not  
20 have the authority to compromise a statute enacted by the legislature.

21           **Defendant's position:** Defendant believes there are no prospects for settlement, at  
22 this time.

23           17. ALTERNATIVE DISPUTE RESOLUTION

24           **Plaintiffs' position:** Alternative dispute resolution is not appropriate.

25           **Defendant's position:** Defendant agrees.

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Respectfully submitted,

Attorneys for Plaintiffs

/s/ James A Tanford

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