

NORTH CAROLINA
WAKE COUNTY

FILED

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

17-CVS-_____

2017 MAY 15 AM 11:47

CRAFT FREEDOM, LLC,
THE OLDE MECKLENBURG
BREWERY, LLC, and
NODA BREWING COMPANY,

WAKE CO., C.S.C.

BY _____

Plaintiffs,

v.

COMPLAINT

THE STATE OF NORTH CAROLINA,
Defendant.

INTRODUCTION

1. This is a state constitutional challenge to North Carolina laws that force craft breweries to hand over their self-distribution businesses, distribution rights, brand control, and future profits to private parties for no reason other than economic protectionism.

2. North Carolina is eleventh in the nation for beer production, and its craft beer industry is rapidly growing. The industry accounts for over 10,000 jobs, provides over \$300 million in annual wages to North Carolinians, and generates enormous tax revenue for the State. In total, North Carolina's craft beer industry has an estimated annual economic impact in excess of \$1.2 billion.

3. The State is artificially suppressing this economic growth, however, through two unconstitutional laws. First, North Carolina's "Distribution Cap" punishes craft breweries for their own success by forcing them to hand over the rights to distribute their own beer to private distributors if they sell more than

25,000 barrels—a cap that is arbitrary and ensnares small but successful craft breweries. Second, North Carolina’s “Franchise Law” forces craft breweries to enter into oppressive, one-sided contracts with distributors that literally last forever, and which require the breweries to turn over control of their product—including pricing—to the distributors.

4. The Distribution Cap and Franchise Law are the opposite of the American Dream: They punish small business owners for their hard work by stripping them of their businesses when they achieve “too much success,” forcing them to hand over their businesses to private parties who reap the profits. These laws violate multiple provisions of the North Carolina Constitution, which has never tolerated protectionist schemes of this kind.

5. The Plaintiffs in this lawsuit are small craft breweries that achieved success through their owners’ and employees’ hard work, innovation, risk, and skill. Like any business, the Plaintiffs are entitled to enjoy the fruits of their own labor, as well as the freedom to choose where, when, to whom, and for how much their own product is sold. Indeed, the North Carolina Constitution guarantees them these rights.

6. For the reasons that follow, this lawsuit seeks an order declaring that the State’s application of the Distribution Cap and Franchise Law to the Plaintiffs violates the North Carolina Constitution.

PARTIES

7. Craft Freedom, LLC is a North Carolina corporation with its principal place of business in Charlotte, North Carolina. Craft Freedom’s mission is to

promote and support the craft beer industry in North Carolina by opposing the Distribution Cap and Franchise Law. Its members are small but successful craft breweries that are subject to these laws or, alternatively, suffer threatened constitutional injury as the result of these laws. A number of Craft Freedom's members already enjoy sufficient consumer demand to drive their sales well beyond the Distribution Cap, and would do so were it not for the Distribution Cap and Franchise Law.

8. The Olde Mecklenburg Brewery, LLC ("OMB") is a North Carolina corporation licensed to do business as a craft brewery. OMB's principal place of business is Charlotte, North Carolina. OMB already enjoys sufficient consumer demand to drive its sales well beyond the Distribution Cap, and would do so were it not for the Distribution Cap and Franchise Law.

9. NoDa Brewing Company ("NoDa") is a North Carolina corporation licensed to do business as a craft brewery. NoDa's principal place of business is Charlotte, North Carolina. NoDa already enjoys sufficient consumer demand to drive its sales well beyond the Distribution Cap, and would do so were it not for the Distribution Cap and Franchise Law.

10. The State of North Carolina enacts and enforces legislation, including the laws challenged in this lawsuit.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action because Plaintiffs seek declaratory relief and injunctive relief directly under the North Carolina Constitution, and no other adequate remedy at law is available or

appropriate. Therefore, sovereign immunity is inapplicable.

12. Venue is proper in Wake County Superior Court pursuant to N.C. Gen. Stat. §§ 1-77 and 1-82 because this lawsuit is an as-applied constitutional challenge to laws enacted by the General Assembly in Raleigh.

FACTUAL ALLEGATIONS

North Carolina's Craft Beer Industry

13. “Craft beer” is generally described as full-flavored beer produced by independently owned breweries with owners and employees that directly supervise the brewing process. Craft beers vary widely, ranging from traditional lagers brewed with centuries-old methods and natural ingredients to modern ales brewed with unconventional methods and innovative ingredients. Craft breweries tend to be highly involved in their local communities through philanthropy, local events, and volunteerism.

14. The popularity of craft beer has increased rapidly over the past decade. Craft beer now makes up roughly 13 percent of sales volume in the country’s \$105 billion beer market.

15. Here in North Carolina, the craft beer industry is relatively new. In 2005, during a movement known as “Pop the Cap,” craft breweries sought and obtained the freedom to produce beer with an alcohol content higher than six percent. This allowed breweries the freedom to produce beer with more dynamic flavor profiles—for example, OMB’s “Bauern Bock,” a 7.5-percent alcohol traditional German-style doppelbock lager brewed for the holiday season, or NoDa’s “Hop Drop ‘n Roll,” a 7.2-percent alcohol American-Style IPA that won Gold at the 2014 World

Beer Cup. This is an important feature that distinguishes craft beers from the more mainstream beers that are mass-produced by the extremely large, multinational brewing companies known as megabreweries.

16. In recent years, North Carolina's craft beer industry has emerged as a substantial force in driving economic development across the State. The growing popularity of our breweries has even led national craft breweries to open new facilities in North Carolina, including Sierra Nevada (from California), New Belgium (from Colorado), and Oskar Blues (also from Colorado).

17. North Carolina's craft breweries now serve as a significant driver of tourism. Craft breweries frequently host brewery tours that allow craft beer enthusiasts to learn about the beer-making process, sample various beers, and meet the brewers. This tourism has even spawned new industries in North Carolina catering to craft beer enthusiasts, from guided trolley tours to the Asheville Ale Trail.

18. Today, North Carolina is home to more than 200 breweries, more than four times the number that existed in 2010.

The "Three-Tier" System

19. In the half-century following Prohibition's repeal, rapid consolidation in the American beer industry meant that small, local breweries all but disappeared. By 1979, the number of breweries in the United States had plummeted to only 44. In that era, local breweries were replaced by massive, national brewing powerhouses that focused on mass-produced light beers brewed

with cheap ingredients. While the five largest breweries held approximately 20 percent of the domestic market in 1947, they had seized nearly 90 percent of it by 2001.

20. This consolidation of market power by a few massive megabreweries was perceived by some as a threat to free-market competition. Sensing an opportunity, distributors lobbied for laws to entrench their position and shield them from the perceived anticompetitive potential of the megabreweries. These laws, of course, were enacted decades before the Pop the Cap movement, and many years before small but successful craft breweries like OMB, NoDa, and Craft Freedom's members came into existence.

21. These laws reinforce the so-called "three-tier" system. Those three tiers are: (1) breweries; (2) distributors; and (3) retailers. Under this system, the three "tiers" of businesses—with limited exceptions—must remain independent from one another. Thus, under this system, distributors are the very definition of the "middle man." They simply take the product from point A (the brewery) and deliver it to point B (restaurants, grocery stores, bars, and other retailers). As is typical for middle men whose role is not market-driven, the distributors' profit margin has always been, and continues to be, enormous.

22. Today, with the emergence of North Carolina's small craft brewery industry, the landscape has changed entirely. With more than 200 breweries in North Carolina, the industry is experiencing rapid growth and fierce competition. Nevertheless, the old laws aimed at preventing a few megabreweries from capturing

100 percent of the market also apply to each of North Carolina’s more than 200 breweries, which each hold only a tiny percentage of the craft beer market.

23. As a result, the old laws that were intended to promote competition and benefit consumers now actually *suppress* competition and *harm* consumers. Now, these laws artificially insulate private distributors—and, ironically, the megabreweries that have portfolios with these distributors—from the natural market competition that these distributors would face from self-distributing craft breweries. In other words, the law’s purpose has been flipped on its head.

24. Despite this, North Carolina’s distributors in recent years have succeeded in persuading the General Assembly to maintain—and, in some instances, worsen—these laws so that they can continue profiting at the craft breweries’ expense. As a result, North Carolina currently enforces laws that, as applied to OMB, NoDa, and Craft Freedom’s members, violate multiple provisions of the North Carolina Constitution.

North Carolina’s “Distribution Cap”

25. North Carolina’s Distribution Cap is the product of various statutes in Chapter 18B of the North Carolina General Statutes. Those statutes include N.C. Gen. Stat. §§ 18B-102(a), 102(b), 1006(h), 1104(8), and 1305(a1).

26. The Distribution Cap restricts the independent growth of craft breweries by placing an arbitrary 25,000-barrel cap on the amount of beer they can self-distribute. As a result, North Carolina’s craft breweries that sell more than 25,000 barrels of beer in a year must give up their self-distribution businesses, distribution rights, brand control, and future profits, and instead, pay a distributor

to take over control of their beer and take it to market. Any deviation from these strictures is a violation of the State's criminal laws.

27. What is more, once a craft brewery exceeds the Distribution Cap, it loses its self-distribution business, distribution rights, brand control, and future profits for *all* of its barrels, not just the excess above the cap. In other words, if the craft brewery sells 25,001 barrels, then it loses its self-distribution business, distribution rights, brand control, and future profits for all 25,001 barrels, not just the single barrel over the cap.

28. Craft breweries, like all businesses, desire the freedom to choose how they distribute and market their product. Many small but successful craft breweries, like OMB, NoDa, and Craft Freedom's members, prefer to self-distribute for a host of reasons. These reasons include: (a) retaining control over their brand; (b) maintaining control over their marketing efforts; (c) managing quality control during transportation; (d) choosing the geographic territory in which their products are distributed; (e) retaining control over their product sales; (f) improving opportunities to build their customers' loyalty; and (g) increasing their profitability.

29. In addition to these and other reasons, self-distribution allows craft breweries to improve their ability to meet consumer demand. This is because third-party distributors generally manage portfolios containing beers from the megabreweries, whose size and leverage provides economic incentives for distributors to promote those beers instead of the brands offered by craft breweries. These perverse incentives, however, do not exist for craft breweries that self-

distribute.

30. Furthermore, many craft breweries prefer to self-distribute because if they do not, they must relinquish all control over the distribution and sales of their beer to the distributor. As described more fully below, the Franchise Law mandates that the distributor assume control over all aspects of sales, marketing, delivery, distribution, quality control during transportation, and even pricing. Conversely, self-distribution guarantees craft breweries access to market, a fundamental requirement for any business to have a chance at success. Without self-distribution, there is a tremendous disincentive for entrepreneurs to invest in a craft brewery, because the brewery's access to market rests in the hands of other private companies that have no vested interest in the success of the brewery.

31. Moreover, as described below, the law prevents the breweries from freely negotiating the value of their distribution rights when they are forced to hand them over to third-party distributors. As a result, when North Carolina's craft breweries relinquish their distribution rights, they are forced to do so at artificially suppressed values.

32. Ultimately, the practical impact of the Distribution Cap is that North Carolina's craft breweries are presented with an impossible dilemma: They can inflict costly business losses on themselves to artificially stunt their own growth, or they can hand over their self-distribution business, distribution rights, brands, and future profits to a private party.

North Carolina's "Franchise Law"

33. North Carolina's Franchise Law is the product of various statutes in

Chapter 18B of the North Carolina General Statutes. Those statutes include N.C. Gen. Stat. §§ 18B-102(a), 102(b), 1006(h), and 1301-09. These laws dictate the terms and duration of the distribution agreements that breweries must enter once they exceed the Distribution Cap. As described below, the mandatory provisions of these laws are oppressive, one-sided, non-negotiable, and unconstitutional.

34. First, the Franchise Law imposes territorial exclusivity: It requires that the distributor receive exclusive distribution rights within a geographic territory. *See* N.C. Gen. Stat. § 18B-1303(a). As a result, a brewery is denied the choice of whether to self-distribute within a given territory, engage a distributor for only certain market segments within a given territory (for example, off-premises retailers like grocery stores), or enter into a contract with another distributor within a given territory.

35. This territorial exclusivity means that the brewery cannot supply its own products to retailers within the territory. As one example, if a local restaurant contacted a craft brewery to order a particular beer for a special beer-pairing menu, the brewery would have to fill that order through a distributor, and the distributor would take a substantial cut of the brewery's profits.

36. This territorial exclusivity also means that, for breweries permitted to operate taprooms or other retail locations separate and apart from their manufacturing facility, if they have engaged a distributor for the territory where their taproom is located, they are forced to pay the distributor to transport their own beer to their own taprooms. In other words, the breweries are forced into a

ridiculous scenario: They must sell their beer to a distributor at a discount, arrange for the distributor to deliver it to the brewery's own taproom, and then buy their own beer back from the distributor at whatever higher price the distributor commands—typically a 30 percent increase over the original price.

37. This territorial exclusivity, meanwhile, further discourages promotional efforts for craft breweries when those efforts might spill over into a neighboring territory controlled by a competing distributor. Thus, there are often incentives for distributors to avoid selling certain beers from craft breweries in certain markets. This not only hurts craft breweries, but it also reduces consumer choice.

38. The harm to breweries stretches well beyond any single distribution territory. For example, distributors routinely insist on including a right-of-first-refusal provision for all other territories into which the brewery might want to distribute its brand in the future. Going even further, the Franchise Law broadly defines “brand” to encompass any products “manufactured under a common identifying trade name,” such that the territorial exclusivity extends beyond any single beer produced by the brewery to all varietals produced under the brewery's general trade name. *See* N.C. Gen. Stat. § 18B-1303(a).

39. In addition to territorial exclusivity, the Franchise Law also makes the distribution rights perpetual. *See* N.C. Gen. Stat. § 18B-1304. Subject to certain limited exceptions discussed below, this means that a distributor who acquires distribution rights is entitled to keep them forever.

40. For example, a brewer exceeding the 25,000-barrel cap cannot “alter in a material way, terminate, *fail to renew*, or cause a [distributor] to resign from” a distribution agreement absent proof of “good cause” and compliance with strict notice and opportunity-to-cure provisions. N.C. Gen. Stat. § 18B-1304(2) (emphasis added); *see also* N.C. Gen. Stat. § 18B-1304(7) (stating that a brewery may not “[t]erminate, cancel, or nonrenew or attempt to terminate, cancel, or nonrenew a [distribution] agreement on the basis that the [distributor] fails to agree or consent to an amendment to the [distribution] agreement”). Even a change in a brewery’s ownership will not permit a change in the distribution rights. *See* N.C. Gen. Stat. § 18B-1305(d)(3)-(4). The new brewery owner must honor the same terms. *See id.*

41. The “good cause” requirement for terminating a distribution agreement is also disproportionately high, and the burden falls on the brewery. The brewery must show that the distributor breached a provision in the distribution agreement that was: (a) reasonable; (b) material; (c) not unconscionable; and (d) “not discriminatory when compared with the provisions imposed, by their terms or in the manner of enforcement, on other similarly situated” distributors. N.C. Gen. Stat. § 18B-1305(a). As a practical matter, meeting this standard becomes impossible. Thus, the brewery is left with no meaningful legal recourse against a distributor that fails to fulfill its duties, such as failing to make reasonable efforts to promote the brewery’s products. Moreover, the Franchise Law sets stiff penalties for breweries that unsuccessfully challenge a distribution agreement for good cause, including allowing the distributor to recover a host of special monetary damages.

See N.C. Gen. Stat. § 18B-1306(b). As a result of all this, breweries are effectively stuck with these burdensome, one-sided distribution agreements forever.

42. In addition, if a brewery that exceeded the 25,000-barrel cap later falls below the cap, the brewery can only go back to self-distributing if it buys its own distribution rights back from the distributors. *See* N.C. Gen. Stat. § 18B-1305(a1). Meanwhile, the law allows distributors to sell the brewery's distribution rights to any of their fellow distributors. *See* N.C. Gen. Stat. § 18B-1307. Thus, after a distributor receives the brewery's distribution rights at a steep discount (by operation of law), it can resell those valuable rights for a profit, of which the brewery gets none. In some instances, the brewery's distribution rights are resold to a distributor with a megabrewery portfolio who has economic incentives not to sell the brewery's brand at all—a situation for which the brewery has no recourse. Indeed, the law provides the distributors with so much ownership and control over the brewery's distribution rights that it even allows the distributors to bequeath those distribution rights to their family members as part of their estate. *See* N.C. Gen. Stat. § 18B-1307(a).

43. In addition, the law makes all of the above-described provisions mandatory and nonnegotiable. In fact, the law makes it illegal for breweries to even suggest alternative terms. *See* N.C. Gen. Stat. § 18B-1304(4). Furthermore, the penalty for violating any of the laws described above is a Class 1 Misdemeanor, with criminal penalties of up to 120 days in jail. *See* N.C. Gen. Stat. § 18B-102.

44. In short, the Franchise Law leaves the breweries powerless in an

oppressive and illusory “contractual” relationship with no recourse. Craft brewers who question their distributors’ efforts face the real and legitimate prospect of the distributor intentionally ignoring that craft brewery’s brand and promoting competing brands—effectively extinguishing the craft brewery’s business. The craft brewery, meanwhile, has no remedy. Craft brewers have no choice but to submit to their distributors’ will, or else face financial ruin.

45. In view of these features of the Franchise Law, some distributors have tacitly acknowledged that it is unconstitutional. In fact, some of these distributors have even incorporated language into their agreements with craft breweries spelling out what will occur if a court strikes down the Franchise Law as unconstitutional in a constitutional challenge, like this one.

Ongoing and Threatened Injury

46. As a result of the circumstances described above, the Distribution Cap and Franchise Law are inflicting injury and threaten to inflict further injury to OMB, NoDa, and Craft Freedom’s members.

47. If OMB, NoDa, and Craft Freedom’s members exceed the 25,000-barrel cap, they will lose their self-distribution business, distribution rights, and future profits. Not only does this threaten injury to OMB, NoDa, and Craft Freedom’s members, but it threatens the many employees who work in these craft breweries’ self-distribution departments. If OMB, NoDa, and Craft Freedom’s members exceed the 25,000 barrel cap, they will no longer have self-distribution departments at all, and these employees would lose their jobs.

48. In addition to the particularized harm to OMB, NoDa, and Craft Freedom's members, the Distribution Cap and Franchise Law also:

- increase breweries' cost to do business, as distributors typically require a substantial cut of nearly 25 percent of the profit;
- decrease breweries' profits further by allowing distributors to impose their own markups without any input from breweries, which means that any benefit of increased profit accrues solely to the distributor, while the harm of decreased demand is borne by the breweries;
- encourage anticompetitive behavior by distributors within exclusive territories, because distributors have no competitors selling the same brands within their territories, and are therefore free to increase prices and reduce consumer choice; and
- drive up product cost for consumers while decreasing investment in quality, because distributors siphon away revenue that breweries would otherwise reinvest in their products.

Economic Protectionism

49. Neither the Distribution Cap nor the Franchise Law can be constitutionally justified. Instead, as applied to OMB, NoDa, and Craft Freedom's members, the only reason these laws are maintained is to artificially stamp out the distributors' competition as a means of economic protectionism.

50. The State's lack of justification for the Distribution Cap and Franchise Law is especially true as applied to OMB, NoDa, and Craft Freedom's members.

Even if, long ago, these laws were aimed at megabreweries for allegedly procompetitive reasons, those justifications fail when the laws are perversely applied to North Carolina's small but successful craft breweries like OMB, NoDa, and Craft Freedom's members, as described above.

51. After all, OMB, NoDa, and Craft Freedom's members are *many thousands* of times smaller than the megabreweries. They also operate in different markets, and hold only a small market share within those markets. In 2016, for example, the megabrewery Anheuser-Busch InBev sold more than 369 million barrels of beer—approximately *15,000 times* the number of barrels sold by OMB or NoDa. As this comparison shows, OMB, NoDa, and Craft Freedom's members are incapable of producing any anticompetitive effects by self-distributing—either individually or in the aggregate. Indeed, as described above, applying the Distribution Cap and Franchise Law to OMB, NoDa, and Craft Freedom's members actually suppresses competition, thereby harming consumers by artificially inflating prices and reducing consumer choice.

52. Likewise, the Distribution Cap and Franchise Law serve no public service or alleged public safety purpose. This is because breweries that self-distribute are subject to all of the same safety and permitting requirements as distributors. *See* N.C. Gen. Stat. § 18B-1104(8). In other words, breweries like OMB, NoDa, and Craft Freedom's members that self-distribute must already comply with the litany of federal and state laws applicable to distributors.

53. In sum, North Carolina's Distribution Cap and Franchise Law

represent a government-mandated competition shield for private distributors at the expense of craft brewers and consumers. The North Carolina Constitution forbids such a result.

COUNT 1: VIOLATION OF EXCLUSIVE EMOLUMENTS CLAUSE
Article I, Section 32 of the North Carolina Constitution

54. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

55. Article I, Section 32 of the North Carolina Constitution provides, “No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.”

56. As described above, the Distribution Cap and Franchise Law grant distributors exclusive or separate emoluments or privileges to distribute beer produced by OMB, NoDa, and Craft Freedom’s members. Distributors do not perform public services in consideration for these separate emoluments or privileges, especially as applied to OMB, NoDa, and Craft Freedom’s members. Indeed, when the Distribution Cap and Franchise Laws are applied to OMB, NoDa, and Craft Freedom’s members, the grant of exclusive or separate emoluments or privileges to distributors actually harms the public, as described above.

57. Accordingly, the Distribution Cap and Franchise Law violate Article I, Section 32 of the North Carolina Constitution as applied to OMB, NoDa, and Craft Freedom’s members.

COUNT 2: UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY
Article I, Section 19 of the North Carolina Constitution

58. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

59. Article I, Section 19 of the North Carolina Constitution provides, “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”

60. As described above, the self-distribution businesses, distribution rights, brands, and future profits of OMB, NoDa, and Craft Freedom’s members are their own hard-earned, valuable, private property. Notably, even the Franchise Law itself recognizes the value of breweries’ distribution rights by forcing breweries to repurchase these rights from distributors at fair market value. *See* N.C. Gen. Stat. § 18B-1305(a1).

61. As described above, through the Distribution Cap and Franchise Law, the State is threatening to strip those valuable rights from OMB, NoDa, and Craft Freedom’s members and hand them over them to private, third-party distributors. As described above, the State threatens to require OMB, NoDa, and Craft Freedom’s members to cede all interest and control over those valuable property rights to the private, third-party distributors, thereby denying them those property rights entirely, much less any reasonable or practical use of them.

62. Under Article I, Section 19, the State is prohibited from taking private property unless the taking is for a valid public purpose. This requires the State to

satisfy two requirements. First, the general public must have a right to a definite use of the condemned property. Second, the taking must furnish the public with some necessity or convenience which cannot readily be furnished without the aid of some governmental power. Unless both of these requirements are satisfied, the State is prohibited from taking private property.

63. As described above, the Distribution Cap and Franchise Law lack any legitimate public purpose. As applied to OMB, NoDa, and Craft Freedom's members, the laws' purpose is pure economic protectionism. Even if economic protectionism were a sufficient governmental objective, moreover, the means used to accomplish that objective here are arbitrary and unreasonable.

64. Accordingly, as applied to OMB, NoDa, and Craft Freedom's members, the Distribution Cap and Franchise Law violate Article I, Section 19 of the North Carolina Constitution.

65. Furthermore, even if the Distribution Cap and Franchise Law somehow served as a reasonable means to accomplish a public purpose, neither law provides the required payment of just compensation to OMB, NoDa, and Craft Freedom's members for the taking of their private property. For this additional reason, as applied to OMB, NoDa, and Craft Freedom's members, the Distribution Cap and Franchise Law violate Article I, Section 19 of the North Carolina Constitution.

COUNT 3: VIOLATION OF FRUITS OF THEIR LABOR CLAUSE
Article I, Section 1 of the North Carolina Constitution

66. Plaintiffs re-allege and incorporate by reference all preceding

paragraphs.

67. Article I, Section 1 of the North Carolina Constitution guarantees the citizens of this State “the enjoyment of the fruits of their own labor.”

68. The self-distribution businesses, distribution rights, brands, and future profits of OMB, NoDa, and Craft Freedom’s members, as described above, constitute the fruits of their own labor under Article I, Section 1.

69. As described above, the Distribution Cap and Franchise Law mandate that if OMB, NoDa, and Craft Freedom’s members achieve business success, they must hand over their self-distribution businesses, distribution rights, brand control, and future profits to private, third-party distributors. As described above, this State-mandated redistribution of private property lacks any justification.

70. Accordingly, as applied to OMB, NoDa, and Craft Freedom’s members, the Distribution Cap and Franchise Law violate Article I, Section I of the North Carolina Constitution.

COUNT 4: VIOLATION OF SUBSTANTIVE DUE PROCESS
Article I, Section 19 of the North Carolina Constitution

71. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

72. Article I, Section 19 of the North Carolina Constitution provides that “[n]o person shall be . . . disseized of his . . . liberties or privileges . . . or in any manner deprived of his . . . liberty or property, but by the law of the land.”

73. As described above, the self-distribution businesses, distribution rights, brands, and future profits of OMB, NoDa, and Craft Freedom’s members are

their hard-earned, valuable, private property. Furthermore, OMB, NoDa, and Craft Freedom's members have a liberty interest in pursuing their right to earn a living in their chosen professions, as well as to control where, when, to whom, and for how much their own product is sold.

74. As described above, there is no justification for applying the Distribution Cap and the Franchise Law to OMB, NoDa, and Craft Freedom's members. As a matter of law, economic protectionism is not a sufficient government interest. Moreover, even if there were a sufficient government interest at stake, applying the Distribution Cap and the Franchise Law to OMB, NoDa, and Craft Freedom's members would be grossly disproportionate to achieving that purported government interest.

75. Accordingly, as applied to OMB, NoDa, and Craft Freedom's members, the Distribution Cap and Franchise Law violate Article I, Section 19 of the North Carolina Constitution.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court:

- (a) declare that, as applied to OMB, NoDa, and Craft Freedom's members, the Distribution Cap and Franchise Law violate the North Carolina Constitution;
- (b) issue a permanent injunction enjoining the enforcement of the Distribution Cap and Franchise Law as applied to OMB, NoDa, and Craft Freedom's members;

- (c) assess costs against the State pursuant to N.C. Gen. Stat. § 1-263;
- (d) award reasonable attorneys' fees to the Plaintiffs, as permitted by law;
and
- (e) grant the Plaintiffs any and all other relief which the Court deems just
and proper.

Respectfully submitted the 15th day of May, 2017.

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