

CAUSE NO. \_\_\_\_\_

LIVE OAK BREWING COMPANY, LLC;  
 REVOLVER BREWING, LLC; AND  
 PETICOLAS BREWING COMPANY, LLC,

Plaintiffs,

v.

TEXAS ALCOHOLIC BEVERAGE  
 COMMISSION; SHERRY COOK, in her  
 official capacity as executive director of the  
 Texas Alcoholic Beverage Commission;  
 JOSÉ CUEVAS, JR., in his official capacity as  
 presiding officer of the Texas Alcoholic  
 Beverage Commission; STEVEN M.  
 WEINBERG, in his official capacity as a  
 member of the Texas Alcoholic Beverage  
 Commission; and IDA CLEMENT STEEN,  
 in her official capacity a member of the  
 Texas Alcoholic Beverage Commission,

Defendants.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

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**PLAINTIFFS' ORIGINAL PETITION,  
 APPLICATION FOR INJUNCTIVE RELIEF,  
 AND REQUEST FOR DISCLOSURE**

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TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Live Oak Brewing Company; Revolver Brewing, LLC; and Peticolas Brewing Company, LLC, Plaintiffs herein, and file their Original Petition, Application for Injunctive Relief, and Request for Disclosure against the Texas Alcoholic Beverage Commission; the executive director of the Commission, namely Ms. Sherry Cook; the presiding officer of the Commission, namely Mr. José Cuevas, Jr.; and the members of the Commission, namely Mr. Steven M. Weinberg and Ms. Ida Clement

Steen, Defendants herein (collectively (“the Commission”). In support of their Petition and Application for Injunctive Relief, Plaintiffs would show the Court the following:

## I. INTRODUCTION

1. This lawsuit seeks to vindicate Plaintiffs’ property rights and economic liberty rights under the Texas Constitution.
2. Plaintiffs are Texas businesses engaged in the business of brewing beer and ale, which are alcoholic beverages.
3. Plaintiffs produce what is colloquially known as “craft beer,” which can be loosely defined as full-flavored beer, brewed using simple ingredients without artificial additives, with direct involvement by the brewery’s owners.
4. A growing number of consumers prefer craft beer to mass-market beer. The reasons for this vary, but include: craft beer is more flavorful and complex; craft beer is often brewed using traditional brewing methods and without artificial additives; craft beer is brewed with the involvement and oversight of the individuals who own the brewery, which ensures higher quality; and craft beer is available in a striking array of styles and flavors.
5. For these reasons, among others, craft beer has been growing in popularity across America and across Texas.
6. Like all beer producers in Texas, Plaintiffs must operate under what is known as the three-tier system. Those tiers are: producers (brewers), distributors, and retailers (bars, restaurants, liquor stores, etc.). By state law, these businesses must remain independent from one another.

7. The three-tier establishes distributors as the middle-men of the alcohol supply chain. Distributors typically pick up beer at the brewery, transport it, warehouse it, and ultimately deliver it to bars, restaurants, grocers, and liquor stores, who then sell it to the end consumer.
8. Brewers will typically work with multiple distributors around the state. But within each particular territory (like a city or county), brewers must choose a single distributor. That means one distributor has the exclusive right to distribute a particular beer in a particular territory. As such, these territorial rights have value.
9. Prior to 2013, brewers were able to negotiate on the open market for the value of their territorial rights and receive payment for these rights from distributors.
10. In 2013, during the 83rd Legislative Session, Texas passed a law (the “Sale Restriction”) that prohibits brewers from selling their territorial rights to distributors. Instead, when a brewer enters into an agreement with a distributor who is acquiring the right to distribute beer in a given area, the brewer must give the distributor those rights for free.
11. Distributors, however, may still negotiate payment for the sale of territorial rights to another distributor. A distributor is thus able to receive territorial rights for free and re-sell them for a profit.
12. A brewer who desired to re-purchase its territorial rights from a distributor would have to pay the distributor for those rights.

13. Plaintiffs built their businesses by taking risks and working hard. The Sale Restriction unconstitutionally conditions their ability to maintain their licenses to produce beer on giving away their valuable territorial rights. The Sale Restriction has no essential nexus or proportionality to any public harm, and Defendants lack any substantial, legitimate, or rational reason for enforcing it.
14. Defendants' unreasonable interference with Plaintiffs' property rights and economic liberty violates the guarantees afforded them by the Texas Constitution and, accordingly, should be declared unconstitutional and permanently enjoined.

## **II. PARTIES AND SERVICE OF PROCESS**

### **PLAINTIFFS**

15. Plaintiff Live Oak Brewing Company, LLC, ("Live Oak") is a Texas Limited Liability Corporation with its principal place of business located in Travis County, Texas. Live Oak is a licensed producer of beer and ale in the State of Texas.
16. Plaintiff Revolver Brewing, LLC, ("Revolver") is a Texas Limited Liability Corporation with its principal place of business located in Hood County, Texas. Revolver is a licensed producer of beer and ale in the State of Texas.
17. Plaintiff Peticolas Brewing Company, LLC, ("Peticolas") is a Texas Limited Liability Corporation with its principal place of business located in Dallas County, Texas. Peticolas is a licensed producer of beer and ale in the State of Texas.

## **DEFENDANTS**

18. Defendant Texas Alcoholic Beverage Commission is an agency of the State of Texas headquartered in Travis County. The Department may be served with process by serving it at its business address, located at 5806 Mesa Boulevard in Austin, Texas 78731.
19. Defendant Sherry Cook is sued in her official capacity as executive director of the Texas Alcoholic Beverage Commission. Ms. Cook may be served with process by serving her at the Commission's business address, located at 5806 Mesa Boulevard in Austin, Texas 78731.
20. Defendant José Cuevas, Jr. is sued in his official capacity as presiding officer of the Texas Alcoholic Beverage Commission. Mr. Cuevas may be served with process by serving him at the Commission's business address, located at 5806 Mesa Boulevard in Austin, Texas 78731.
21. Defendant Steven M. Weinberg. is sued in his official capacity as a member of the Texas Alcoholic Beverage Commission. Mr. Weinberg may be served with process by serving him at the Commission's business address, located at 5806 Mesa Boulevard in Austin, Texas 78731.
22. Defendant Ida Clement Steen is sued in her official capacity as a member of the Texas Alcoholic Beverage Commission. Ms. Steen may be served with process by serving her at the Commission's business address, located at 5806 Mesa Boulevard in Austin, Texas 78731.
23. The state Attorney General is notified of this proceeding pursuant to Section 30.004(b) of the Texas Civil Practices and Remedies Code. The state

Attorney General may be served with process by serving the Honorable Greg Abbott at his business address, located at 300 West 15th Street in Austin, Texas 78701.

### **III. DISCOVERY CONTROL PLAN**

24. Plaintiffs intend to conduct Level 2 discovery under Rule 190.3 of the Texas Rules of Civil Procedure.

### **IV. JURISDICTION AND VENUE**

25. The Court has subject matter jurisdiction because Plaintiffs seek to vindicate their rights under the Texas Constitution, because Plaintiffs seek a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code § 37.003, and because Plaintiffs seek injunctive relief against state agencies and officers. *See* Tex. Civ. Prac. & Rem. Code § 65.021.

26. Venue is proper in Travis County pursuant to Sections 15.002(a)(3), 15.005, and 65.023 of the Texas Civil Practices and Remedies Code and Section 2001.038(b) of the Texas Government Code.

### **V. FACTS**

#### **THE RISE OF TEXAS CRAFT BREWING**

27. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.
28. Craft beer has been popular in other parts of the country for decades, but has caught on in Texas only fairly recently. Nevertheless, it has quickly risen in

popularity. Plaintiffs estimate that there are more than 20 full-time craft breweries in the state, and dozens more brewpubs and part-time operations.

29. Like many new businesses, craft breweries start small, and that size is, initially, part of their appeal. Plaintiffs, like most craft breweries, hold brewery tours on a weekly or bi-weekly basis. These tours allow craft beer enthusiasts to learn about the process of making beer, sample the brewers' different beers, and get to know the individuals who make their beer. This personal connection between craft brewers and their customers has been integral to the rise in craft beer's popularity in Texas.

30. Nevertheless, most craft breweries do not want to remain purely local. They would like to have their beer available in other parts of Texas and, in most cases, the United States. Brewers, including Plaintiffs, plan for expansion. As explained below, that eventually means doing business with beer distributors.

31. One technical note: Texas Alcoholic Beverage Code § 1.04 differentiates between beer and ale as follows: "Beer" is a malt beverage that contains not more than 4% alcohol by weight; "ale" is an ale or lager that contains more than 4% alcohol by weight. This legal distinction does not reflect common usage of these terms. Plaintiffs produce both "beer" and "ale" as defined by the Alcoholic Beverage Code. Because the distinction is immaterial to this complaint, the complaint uses the term "beer" to refer to ales, lagers, and other alcoholic beverages commonly known as "beer."

## **TERRITORIAL EXCLUSIVITY AND THE THREE-TIER SYSTEM**

32. Since the end of Prohibition, Texas has required businesses engaged in the production, distribution, and sale of alcohol to operate under what is commonly known as the three-tier system. The three-tier system requires alcohol producers, distributors, and retailers to remain independent from one another, and prohibits so-called “tied houses” wherein members of two different tiers share ownership or control.
33. Once a brewery produces more than 125,000 barrels of beer per year, they must use distributors to deliver their beer. Texas Alcoholic Beverage Code § 12A.02(a).
34. One barrel contains 31 gallons of beer.
35. Producers who produce fewer than 125,000 barrels of beer per year may either self-distribute or use a distributor. A brewer may not self-distribute more than 40,000 barrels per year. Texas Alcoholic Beverage Code § 12A.02(b).
36. Due to the challenging logistics involved with remote distribution, a small producer will typically self-distribute locally and use distributors to expand into other parts of Texas.
37. If a producer uses a distributor in a given territory, that distributor must be given exclusive rights to that territory. For instance, if Plaintiff Peticolas Brewing signed an agreement to have its beer distributed in Austin, its chosen distributor would be the only company that could distribute Peticolas beer in Austin. This exclusivity is required by statute. Texas Alcoholic Beverage Code § 102.51(b).



38. Territorial rights are not merely exclusive. They are also perpetual, meaning that a distributor who acquires territorial rights may keep them in perpetuity (except in certain limited cases). Texas Alcoholic Beverage Code § 102.74.

39. A distributor may sell territorial rights and divest them to another distributor. Producers may object to such a sale only on limited grounds. Texas Alcoholic Beverage Code § 102.76. Producers may purchase their territorial rights back from distributors if the distributor agrees to allow such re-purchase.

**THE 2013 LEGISLATION PROHIBITS PAYMENT FOR TERRITORIAL RIGHTS**

40. Prior to 2013, brewers could, and did, negotiate on the open market with distributors for payment for their territorial rights.

41. This practice came to an abrupt end upon the passage of Senate Bill 639 during the 83rd Texas Legislative Session in 2013.

42. The Sale Restriction is set forth in Senate Bill 639, now codified at Texas Alcoholic Beverage Code §102.75(a)(7), which specifically provides that “no manufacturer shall ... accept payment in exchange for an agreement setting forth territorial rights.”

43. Defendants are responsible for enforcing the Sale Restriction.

44. Tellingly, the Sale Restriction does not prohibit distributors from accepting payment when they re-sell the territorial rights to a beer in their portfolio to another distributor. Only brewers are prohibited from accepting payment.

45. If a brewer wishes to re-acquire its territorial rights from a distributor, that brewer will have to pay the distributor for those rights, even though the distributor initially received them for free from the brewer. The Sale Restriction does not prohibit distributors from charging producers for the re-purchase of territorial rights.

#### **STIFLING THE TEXAS CRAFT BEER RENAISSANCE**

46. The burden of the Sale Restriction falls squarely on craft brewers, the benefit squarely with distributors. What brewers previously sold for compensation, they are now required to give away. What distributors previously had to negotiate for on the open market, they now receive for free. And distributors are even allowed to take those territorial rights and re-sell them for compensation.

47. The effect of this law is not only to deny craft brewers an important property right in part of their business, but also to make it more difficult and more expensive for craft brewers to expand their businesses.

48. Previously, brewers who negotiated for the sale of their territorial rights could take that money and reinvest it in additional staff and equipment, thus growing their breweries and allowing them to provide beer to other parts of the state.

#### **VI. INJURY TO PLAINTIFFS**

49. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

50. Defendants' actions deny Plaintiffs their property rights and restricts Plaintiffs' economic liberty—their ability to earn an honest living free from unreasonable governmental interference.

#### **LIVE OAK BREWING COMPANY**

51. Plaintiff Live Oak Brewing Company, LLC, is a Texas limited liability company and alcohol producer licensed by both the State of Texas and the federal government.

52. Live Oak Brewing is currently engaged in the business of brewing craft beer.

53. Live Oak Brewing was founded in 1994 and brewed its first beer in 1997. It employs Chip McElroy, its president and founder, and 20 other employees.

54. Live Oak Brewing is located in east Austin, Texas. It operates in a building approximately 8,000 square feet in size. It is equipped with 10 fermenters, 3 brite tanks, hot and cold liquor tanks, a two-vessel brewhouse, a mash/lauter tun, a boil kettle, and a grist case.

55. Live Oak Brewing regularly sells four beers: Pils, Big Bark, HefeWeizen, and Liberation Ale, plus seasonal and special releases. Some are ales and some are lagers. All of the beer that Live Oak Brewing currently sells is sold in kegs. Its beer is not sold in cans or bottles.

56. Because Live Oak Brewing currently produces fewer than 125,000 barrels per year, it possesses a self-distribution license and self-distribution permit, which it uses to supply beer to restaurants and bars in the Austin, Dallas-Fort Worth, San Antonio, and Houston areas.

57. Live Oak has self-distributed their beers from the beginning and continues to do so everywhere except for the Houston area. It has grown from a distribution fleet of a single one-ton van (converted from an ambulance) to four 16 ft. box trucks and two vans. Live Oak's Houston distribution is handled by two Houston beer distributors.
58. Chip McElroy is unwilling to give away his territorial rights to distributors for free, as required under the Sale Restriction. As a result, he has not entered into any contracts with distributors since the law was passed and will generally continue to self-distribute until his brewery reaches sufficient size that self-distribution is no longer legally possible.
59. The Sale Restriction requires Live Oak to give away its territorial rights to distributors, for free, as a condition of maintaining its alcohol manufacturer's license, self-distribution license, brewer's permit, private carrier's permit, and self-distribution permit. If Live Oak accepts compensation for the sale of its territorial rights to distribute beer in other parts of Texas, Defendants will revoke or not renew the above-listed licenses and permits.
60. But for the Sale Restriction, Live Oak would immediately undertake efforts to have its beer distributed in College Station, Corpus Christi, the Dallas-Fort Worth area, Lubbock, San Antonio, and West Texas.
61. The Sale Restriction deprives Live Oak Brewing of its right to negotiate for the sale of its territorial rights, and frustrates its efforts to expand into other parts of Texas by denying it potential revenue to hire more staff and buy more equipment to increase its brewing capacity.

62. The Sale Restriction limits the ability of Live Oak Brewing to expand and has slowed Live Oak Brewing's plans for growth into other parts of Texas.
63. The Sale Restriction threatens Live Oak Brewing with revocation of its alcohol manufacturer's license, self-distribution license, brewer's permit, private carrier's permit, and self-distribution permit unless the brewery agrees to give its valuable territorial rights away to distributors for free.
64. The Sale Restriction has caused Live Oak Brewing to hire fewer employees and invest in less equipment than it would have otherwise done.
65. But for the Sale Restriction, Live Oak Brewing would brew more beer, enter new markets, enter into agreements with distributors for territorial rights, hire more employees, and buy more equipment.

#### **REVOLVER BREWING**

66. Plaintiff Revolver Brewing, LLC, is a Texas limited liability company and alcohol producer licensed by both the State of Texas and the federal government.
67. Revolver Brewing is currently engaged in the business of brewing craft beer.
68. Revolver Brewing was founded in 2011 and brewed its first beer in 2012. It employs Rhett Keisler, its president, and 42 other full-time employees.
69. Revolver Brewing sits in the Texas countryside near Granbury, Texas. It operates on approximately six acres of land. It is equipped with fourteen fermenters, two brite tanks, hot and cold liquor tanks, a brew kettle, a mash tun, and a grist case.

70. Revolver Brewing regularly sells three beers: Blood & Honey Ale, Revolver Bock, and High Brass Ale. They are all ales. Since its inception, Revolver Brewing has also brewed and sold six seasonal or limited-edition beers. Revolver sells its beer in both kegs and bottles. Its beer is not sold in cans.
71. Because Revolver Brewing currently produces fewer than 125,000 barrels per year, it possesses a brewer's self-distribution permit, which it uses to supply beer to restaurants, bars, and grocery, liquor and convenience stores in the Dallas-Fort Worth and Austin areas. Revolver Brewing does this with a small fleet of six box trucks and two one-ton vans, all of which are driven by Revolver's employees. It does not distribute beer outside of the Dallas-Fort Worth and Austin areas.
72. The Sale Restriction requires Revolver to give away its territorial rights to distributors, for free, as a condition of maintaining its alcohol manufacturer's license, brewer's self-distribution permit, brewer's permit, and private carrier's permit. If Revolver accepts compensation for the sale of its territorial rights to distribute beer in other parts of Texas, Defendants will revoke or not renew the above-listed permits.
73. But for the Sale Restriction, Revolver would immediately undertake efforts to have its beer distributed in Houston and San Antonio.
74. The Sale Restriction deprives Revolver Brewing of its right to negotiate for the sale of its territorial rights, and frustrates its expansion into other parts of Texas by denying it revenue to hire more staff and buy more equipment to increase its brewing capacity.

75. The Sale Restriction limits the ability of Revolver Brewing to expand and has slowed Revolver Brewing's plans for growth into other parts of Texas.
76. The Sale Restriction threatens Revolver Brewing with revocation of its brewer's self-distribution permit, brewer's permit, and private carrier's permit, if the brewery attempts to negotiate for the sale of its territorial rights on the open market.
77. The Sale Restriction has caused Revolver Brewing to hire fewer employees and invest in less equipment than it would have otherwise done.
78. But for the Sale Restriction, Revolver Brewing would brew more beer, enter new markets, enter into agreements with distributors for territorial rights, hire more employees, and buy more equipment.

#### **PETICOLAS BREWING COMPANY**

79. Plaintiff Peticolas Brewing Company, LLC, is a Texas limited liability company and alcohol producer licensed by both the State of Texas and the federal government.
80. Peticolas Brewing is currently engaged in the business of brewing craft beer.
81. Peticolas Brewing was founded in 2010 and brewed its first beer in 2011. It employs Michael Peticolas, its sole owner and head brewer, and six other employees.
82. Peticolas Brewing is located in an industrial neighborhood near downtown Dallas, Texas. It operates in a building approximately 8,500 square feet in size.

It is equipped with eight fermenters, two brite tanks, hot and cold liquor tanks, a brew kettle, a mash tun, and a grist case.

83. Peticolas Brewing regularly sells three beers: Velvet Hammer, Royal Scandal, and Golden Opportunity. They are all ales. Since its inception, Peticolas Brewing has also brewed and sold ten seasonal or limited-edition beers. All of the beer that Peticolas Brewing currently sells is sold in kegs. Its beer is not sold in cans or bottles.

84. Because Peticolas Brewing currently produces fewer than 125,000 barrels per year, it possesses a self-distribution license and self-distribution permit, which it uses to supply beer to restaurants and bars in the Dallas-Fort Worth area. Peticolas Brewing does this with a small fleet that includes one box truck, one van, one pickup, and one SUV, all of which are driven by Michael Peticolas or his employees. It does not distribute beer outside of the Dallas-Fort Worth area.

85. Peticolas Brewing was involved in negotiations with distributors over territorial rights prior to the Sale Restriction being passed. After the Sale Restriction's passage, distributors immediately broke off negotiations for the sale of Peticolas Brewing's territorial rights.

86. Michael Peticolas is unwilling to give away his territorial rights to distributors for free, as required under the Sale Restriction. As a result, he has not entered into any contracts with distributors and will continue to self-distribute until his brewery reaches sufficient size that self-distribution is no longer legally possible.



87. The Sale Restriction requires Peticolas Brewing to give away its territorial rights to distributors, for free, as a condition of maintaining its alcohol manufacturer's license, self-distribution license, brewer's permit, private carrier's permit, and self-distribution permit. If Peticolas Brewing accepts compensation for the sale of its territorial rights to distribute beer in other parts of Texas, Defendants will revoke or not renew the above-listed licenses and permits.
88. But for the Sale Restriction, Revolver would immediately undertake efforts to have its beer distributed in numerous cities and counties in Texas that are not currently supplied with its beer.
89. The Sale Restriction deprives Peticolas Brewing of its right to negotiate for the sale of its territorial rights, and frustrates its expansion into other parts of Texas by denying it revenue to hire more staff and buy more equipment to increase its brewing capacity.
90. The Sale Restriction limits the ability of Peticolas Brewing to expand and has slowed Peticolas Brewing's plans for growth into other parts of Texas.
91. The Sale Restriction threatens Peticolas Brewing with revocation of its alcohol manufacturer's license, self-distribution license, brewer's permit, private carrier's permit, and self-distribution permit if the brewery attempts to negotiate for the sale of its distribution rights on the open market.
92. The Sale Restriction has caused Peticolas Brewing to hire fewer employees and invest in less equipment than it would have otherwise done.

93. But for the Sale Restriction, Peticolas Brewing would brew more beer, enter new markets, enter into agreements with distributors for territorial rights, hire more employees, and buy more equipment.

## **VII. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **(TEX. CONST. ART. I, § 17 – TAKING, DAMAGING, OR DESTROYING PROPERTY FOR PUBLIC USE)**

94. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

95. Article I, Section 17(a) of the Texas Constitution provides that:

No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is for:

(1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by: (A) the State, a political subdivision of the State, or the public at large; or (B) an entity granted the power of eminent domain under law; or

(2) the elimination of urban blight on a particular parcel of property.

96. Among the rights secured by the Takings Clause of the Texas Constitution is the right to be secure in one's property.

97. The Sale Restriction violates the Takings Clause of the Texas Constitution insofar as it unconstitutionally conditions Plaintiffs' ability to maintain essential business licenses and permits on Plaintiffs' giving away, for free, their valuable territorial rights.

98. The Sale Restriction denies Plaintiffs the right to alienate a valuable piece of property—their territorial rights—for compensation.

99. Defendants presently and unconstitutionally require Plaintiffs to give away their territorial rights to distributors, for free, as a condition of maintaining Plaintiffs' alcohol manufacturer's licenses, self-distribution licenses, brewer's permits, private carrier's permits, and self-distribution permits. This condition bears neither an essential nexus nor rough proportionality to any public harm alleged to arise from Plaintiffs' businesses.
100. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code § 37.001, *et seq.*, Plaintiffs respectfully request the Court enter a judgment declaring that Texas Alcoholic Beverage Code §102.75(a)(7) violates the Takings Clause of the Texas Constitution insofar as it prevents brewers from charging distributors for territorial rights to distribute their beer.

#### **SECOND CAUSE OF ACTION**

##### **(TEX. CONST. ART. I, § 19 – DEPRIVATION OF LIBERTY; DUE COURSE OF THE LAW OF THE LAND)**

101. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.
102. Article I, Section 19 of the Texas Constitution provides that:  
  
No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land.
103. Among the rights secured by the due course of the law of the land guarantee of the Texas Constitution, commonly known as the constitution's "due process" guarantee, is the right to earn an honest living in the occupation of one's choice free from unreasonable governmental interference.

104. Defendants have violated the due process guarantee of the Texas Constitution by enforcing the Sale Restriction, which prohibits Plaintiffs from negotiating for the sale of their territorial rights.

105. Defendants have no substantial, legitimate, or rational reason for prohibiting the sale of territorial rights by beer producers.

106. The state's police power does not extend to regulating the terms of contract between two private businesses for no other reason than to transfer wealth from one business to another.

107. Defendants are presently and unconstitutionally requiring Plaintiffs to give away their territorial rights to distributors as a condition of transferring those rights. Giving these rights away for free is a condition of maintaining Plaintiffs' alcohol manufacturer's licenses, self-distribution licenses, brewer's permits, private carrier's permits, and self-distribution permits.

108. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code § 37.001, *et seq.*, Plaintiffs respectfully request the Court enter a judgment declaring that Texas Alcoholic Beverage Code §102.75(a)(7) violates the Takings Clause of the Texas Constitution insofar as it prevents brewers from charging distributors for territorial rights to distribute their beer.

### **XIII. APPLICATION FOR PERMANENT INJUNCTION**

109. Plaintiffs hereby incorporate the allegations set forth above, all of which are fully re-alleged here.

110. Plaintiffs respectfully ask the Court to set their application for permanent injunction for a hearing and, following the hearing, to issue a permanent injunction against Defendants.

#### **IX. ATTORNEYS' FEES**

111. Plaintiffs hereby request all costs and reasonable attorneys' fees, as permitted by Section 37.009 of the Texas Civil Practices and Remedies Code.

#### **X. REQUEST FOR DISCLOSURE**

112. Plaintiffs request that Defendants disclose to Plaintiffs, within 50 days of the service of this request, the information and materials described in Rule 194.2(a), (b), (c), (e), (i), and (l) of the Texas Rules of Civil Procedure.

#### **XI. PRAYER AND RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. For a permanent injunction barring Defendants from enforcing Texas Alcoholic Beverage Code §102.75(a)(7) against Plaintiffs;
- B. For a declaratory judgment that Defendants violate the Takings Clause of the Texas Constitution by requiring Plaintiffs to give away their territorial rights to distributors, rather than negotiate for them on the open market, as a condition of holding the licenses and permits necessary to produce beer and ale in Texas.
- C. For a declaratory judgment that Defendants violate the due process guarantee of the Texas Constitution by unreasonably interfering with Plaintiffs' right to operate their businesses and contract freely on the open market;
- D. For an award of one dollar in nominal damages;
- E. For an award of attorneys' fees and court costs; and
- F. For all other legal and equitable relief to which Plaintiffs may be entitled.

RESPECTFULLY SUBMITTED this 10th day of December, 2014.

**INSTITUTE FOR JUSTICE**

By: /s/ Matthew R. Miller  
Matthew R. Miller (TX Bar No. 24046444)  
Arif Panju (TX Bar No. 24070380)  
Institute for Justice  
816 Congress Avenue, Suite 960  
Austin, TX 78701  
(512) 480-5936  
(512) 480-5937 (fax)  
mmiller@ij.org  
apanju@ij.org

**ATTORNEYS FOR PLAINTIFFS**