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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**  
**THIRD JUDICIAL DISTRICT AT ANCHORAGE**

ZIP KOMBUCHA LLC, SWEETGALE  
MEADWORKS & CIDER HOUSE LLC,  
and GRACE RIDGE BREWING CO.,

Plaintiffs,

v.

JOAN WILSON, in her official capacity  
as Director of the Alaska Alcohol and  
Marijuana Control Office, and the  
ALASKA ALCOHOLIC BEVERAGE  
CONTROL BOARD,

Defendants.

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Case No. 3AN-\_\_\_\_\_CI

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**(42 U.S.C. § 1983; Art. I § 1 and Art. I § 5 of the Alaska Constitution)**

**PRELIMINARY STATEMENT**

*Zip Kombucha, et al. v. Joan Wilson, et al.*

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1. Some customers prefer to patronize loud, dark bars—where they can take in a variety of entertainment. Others prefer a brighter, quieter setting such as a brewery or winery where they can enjoy acoustic musicians, poetry, storytelling events, or a simple game of darts. In Alaska, the former is permitted freely; the latter is restricted heavily, where not banned entirely.

2. For reasons that have nothing to do with the health, safety, or welfare of its citizens or tourists, state law flatly prohibits TV and organized games on the premises of breweries and wineries. Further, state law only allows these businesses to host four entertainment events a year. And breweries and wineries must obtain advance permission to host each event by applying for a permit, paying \$100 per application, and giving at least three days advance notice of the event.

3. Proprietors of bars, restaurants, and campus pubs operate under no such restrictions. Alcohol is served in bars, restaurants, breweries, and wineries, but only the bar, restaurant, and campus pub licensees are allowed to provide entertainment on site as they see fit.

### **JURISDICTION AND VENUE**

4. Jurisdiction over this action for declaratory and injunctive relief is conferred upon this Court by AS 22.10.020(c) and (g). This court has jurisdiction over the parties and subject matter pursuant to AS 09.05.015(a)(3), 09.50.250, and 22.10.020(c) and (g).

5. This action is also brought under 42 U.S.C. § 1983 to redress the deprivation of Plaintiffs' federal constitutional rights.

6. Venue is proper under AS 22.10.030 and Alaska Rule of Civil Procedure 3(c).

### **PARTIES**

7. Plaintiff Zip Kombucha LLC is an Alaska limited liability company doing business in Anchorage, Alaska.

8. Plaintiff Sweetgale Meadworks & Cider House LLC is an Alaska limited liability company doing business in Homer, Alaska.

9. Plaintiff Grace Ridge Brewing Company is an Alaska corporation doing business in Homer, Alaska.

10. Defendant Alaska Alcoholic Beverage Control Board (Board) is the regulatory body charged with enforcement of alcohol commerce laws.

11. Defendant Joan Wilson is the Director of the Alcohol and Marijuana Control Office. Among other responsibilities, Director Wilson has authority to enforce Title 4 (Alcoholic Beverages) and the Board's regulations. Director Wilson is sued in her official capacity.

### **FACTUAL ALLEGATIONS**

#### **Alcohol Retail Licensees**

12. The scope of business activities allowed to different classes of alcoholic beverage retailers is governed by Title 4 of the Alaska Statutes.

13. Bar licensees hold a Beverage Dispensary License issued by the Alcoholic Beverage Control Board (Board), allowing them to sell and serve alcoholic beverages for consumption on the premises. AS 04.09.200.

14. Holders of a Restaurant or Eating Place License issued by the Board are authorized to serve alcohol for consumption on the premises. AS 04.09.210. In order to maintain an REPL, a licensee must also serve food.

15. An establishment holding a Pub License is authorized to sell brewed beverages and wine for consumption at designated premises on a college or university campus. AS 04.09.240.

16. Breweries and wineries, which produce and sell their own products, operate under a brewery retail license (AS 04.09.320) and winery retail license (AS 04.09.330), respectively. These licenses authorize the holders to, among other things, serve or sell their products on the licensed premises for consumption on and off the premises.

### Alaska's Restrictions on Live Entertainment

### and Games in Breweries and Wineries

17. Historically, Alaska has banned breweries and wineries from providing any live entertainment, televisions, dancing, and games in the tasting rooms where alcohol is served.

18. In May 2023, the Alaska legislature passed a rewrite of Title 4, called SB 9. SB 9 was the culmination of approximately a decade of legislative wrangling. The law went into effect January 1, 2024.

19. The legislature declared that the policy and purpose of the new law is as follows:

**Sec. 04.06.005. Declaration of policy; purpose; finding.** It is the policy of the state that controlling the manufacture, distribution, barter, possession, and sale of alcoholic beverages in the state is necessary to promote the *health and safety* of the people of the state. It is the purpose of this title to carry out the state’s policy in the public interest. (AS 04.06) (emphasis added).

20. Under both AS 04.09.320(e)(1) and AS 04.09.330(e)(1), respectively, brewery and winery retail licensees are prohibited from allowing “live music or performances, disc jockeys, karaoke, televisions, pool tables, dart games, or organized games or tournaments on the premises where the consumption occurs,” as a condition of their licensure.

21. These Entertainment Restrictions do not apply to bars, restaurants, or campus pubs.

22. The State’s alcohol law authorities have enforced and continue to enforce entertainment restrictions against breweries and wineries.

#### Live Entertainment Permit Scheme

23. New provisions in Title 4 provide a minor exception to the ban on entertainment by creating a restricted permit scheme.

24. Pursuant to AS 04.09.700<sup>1</sup>(a), a brewery or winery licensee may host a live music or “other entertainment” event if they first obtain a Live Music or Entertainment Permit (LME Permit). Licensees are limited to hosting a maximum of four permitted events per year. AS 04.09.700(b).

25. LME Permit applications must be submitted at least three days in advance of the proposed event, AS 04.09.600(b); 3 AAC 305.135(a), along with a \$100 fee per application, 3 AAC 305.150(a)(10), and must meet multiple other burdensome application requirements. *See* AS 04.11.260(a), (c).

26. If an application is submitted fewer than three days in advance, the Director is not required to consider it, but if it is considered and approved, the application fee doubles, to \$200. 3 AAC 305.150(b).

27. The Board has delegated the authority to make LME Permit decisions to the Director, 3 AAC 305.135(d), although the Board retains ultimate authority in LME Permit decisions.

28. Whether it is the Board or the Director who grants or denies a LME Permit, neither Title 4 nor the Board’s implementing regulations require the decisionmaker to explain the reasoning behind his or her decision.

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<sup>1</sup> SB 9 originally designated this provision AS 04.09.685. According to the Alaska legislature’s website, this provision has been renumbered AS 04.09.700. Substantively, it is identical to the original provision. *See* <https://www.akleg.gov/basis/statutes.asp#04.09.700> (last visited February 19, 2024).

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29. The LME Permit scheme lacks specific written criteria to guide the decisionmaker, other than a “best interests of the public” standard. *See* AS 04.11.320(b)(1); AS 04.11.395(a).

30. Although all timely LME Permit applications must be either granted or denied, the decisionmaker is not bound by any specific time frame in which to decide on the application.

31. The applicable procedures from Title 4 and the Board’s regulations do not provide for an aggrieved LME Permit applicant to obtain judicial review of an adverse decision.

32. Bars, restaurants, and campus pubs need not alert—much less obtain permission from—Defendants before they can host live music and other entertainment on their premises. In fact, these three classes of alcohol retail licensees are not required to obtain a LME Permit. Nor do they face restrictions on the number of entertainment events they may provide for their customers.

33. Brewery and winery licensees must shut down by 9 p.m, even if they have a LME Permit, AS 04.09.320(e)(4); AS 04.09.330(e)(4), while bar, restaurant, and pub licensees can provide entertainment beyond 9 p.m.

34. Neither the default prohibition on live entertainment, games, and TV, nor the permit scheme, applies to bars, restaurants, or campus pubs.

Punishments for Violating the  
Entertainment Restrictions and LME Permit Scheme

35. Failure to comply with the terms of a brewery or winery retail license constitutes a “violation” of Title 4, AS 04.09.320(i); AS 04.09.330(i), punishable by a fine of \$250. AS 04.21.72. Similarly, failure to comply with a permit requirement also constitutes a violation of Title 4. AS 04.09.720.<sup>2</sup>

36. The Board may take action against licensees in response to violations, including: revocation or suspension of a license, denying license renewal, placing a licensee on probation for up to three years, and placing conditions or restrictions on a license or future permit. *See* AS 04.11.370(a)(2)-(4), (10); AS 04.11.270(a)(2); AS 04.11.330(a)(1)-(2), (6); 3 AAC 305.050(b)-(c); 3 AAC 305.110(b)(1), (5); 3 AAC 305.890(a); AS 04.11.395(a)-(b).

Plaintiff Licensees

37. Plaintiff Zip Kombucha (Zip) manufactures kombucha and cider. Kombucha is an alcoholic beverage made from fermented tea, and facilities manufacturing it are licensed as breweries. AS 04.09.020. Cider is a beverage containing fermented fruit and facilities manufacturing cider are licensed as wineries. AS 04.09.030.

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<sup>2</sup> SB 9 originally designated this provision AS 04.09.700, but according to the Alaska legislature’s website, this provision has been renumbered AS 04.09.720. Substantively, it is identical to the original provision. *See* <https://www.akleg.gov/basis/statutes.asp#04.09.720> (last visited February 19, 2024).

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38. Zip holds manufacturing and retail licenses as a brewery and a winery. Zip has a tasting room in Anchorage, Alaska where it serves its kombucha and cider. These premises provide a family friendly environment for customers.

39. Prior to operating as a winery and brewery, Zip operated a restaurant under a Restaurant or Eating Place License (REPL). As such, Zip could host unlimited live music, entertainment events, and games on the premises where it sold alcohol.

40. Under Zip's REPL, the company hosted a myriad of live entertainment events, including open mic nights, solo and group music acts, dance lessons, and yoga instruction. These events attracted many patrons in a family-friendly atmosphere. Because Zip ceased serving food, it could no longer operate under an REPL. In surrendering its REPL, Zip also surrendered the ability to freely host the type of entertainment its customers previously enjoyed.

41. Since giving up its REPL and becoming licensed as a brewery and winery three years ago, Zip has stopped providing entertainment in its tasting room. Many of Zip's customers and former entertainment acts regularly reach out to Zip's owner, Jessie Janes, about hosting events.

42. Were it not illegal, Mr. Janes and Zip would regularly host events and provide entertainment on a regular basis throughout the year. Zip would also host games on its premises.

43. During the summer of 2023, Zip was able to host eight separate live entertainment events in its outdoor seating area (not in its tasting room) and provide musical entertainment for its customers. These events were only possible because they were fundraising events for nonprofit organizations that had obtained a special permit for the event. Under a non-profit special event permit, the organization sold Zip's products, which Zip had donated, outside the tasting room. These live music events attracted many customers and increased Zip's normal sales by 2-3 times.

44. However, because the events were possible under a non-profit event permit, Zip had to donate the proceeds to the non-profit organizations.

45. But for the LME Permit Scheme and default prohibition on entertainment, Zip would provide a variety of entertainment options on a regular basis, including those described in paragraph 40. Additionally, Zip would add a regular trivia night on weeknights.

46. Plaintiff Sweetgale Meadworks & Cider House (Sweetgale) holds winery manufacture and retail licenses. Mead is an alcoholic beverage made by fermenting honey. Cider is an alcoholic beverage made by fermenting fruit. The authority to sell and serve both comes from their winery retail license.

47. Sweetgale's owner, Jason Davis, is regularly asked by musicians if they can perform on the premises where alcohol is served, particularly during the summer when tourists abound in Homer. Mr. Davis declines such requests because he does not want to jeopardize Sweetgale's winery licenses.

48. During the winter months, Homer has few tourists, and consequently, business slows significantly at Sweetgale. Hosting live entertainment and games would not only bring more customers to Sweetgale, it would also provide a family friendly environment for the local community.

49. Plaintiff Grace Ridge Brewing (Grace Ridge) holds a brewery retail license. Grace Ridge is a family-owned brewery established in 2016 with the intention of providing a community gathering place (for dogs as well as people), jobs for local residents, and a family-friendly environment for tourists and locals.

50. Grace Ridge hosts many fundraising events on its premises for non-profit groups who have obtained a special event permit. No live music or entertainment may be offered during these events absent a LME Permit.

51. Grace Ridge hosts a monthly art show on premises. It is a popular event that draws a lot of customers. Grace Ridge would like to include musicians such as harp players and guitar players during these events, but it is illegal to do so without a LME Permit.

52. Moreover, Grace Ridge would regularly host entertainment events such as local author book readings, live musicians, and outdoor games.

53. Under their respective retail licenses, Plaintiffs are prohibited from hosting any live entertainment events on their premises unless they obtain a LME Permit. The Director may not issue to them, and they may not obtain, more than four LME Permits per year.

54. Even if Plaintiffs obtained a LME Permit to host entertainment, they could only hold four such events. All other events would be prohibited and hosting them would expose Plaintiffs to threat of fines and loss or non-renewal of their brewery or winery licenses.

55. Plaintiffs desire and intend to provide live music and entertainment consistent with their free speech and equal protection rights under the federal and state constitutions, and they will do so when it is legal under Alaska law.

## **STATEMENT OF CLAIMS**

### **FIRST CLAIM**

Violation of First Amendment to the United States Constitution

(Entertainment Restrictions + Permit Scheme)

56. Plaintiffs reallege and incorporate all preceding paragraphs.

57. An actual and substantial controversy exists between Plaintiffs and Defendants. Plaintiffs have the right to provide their customers

entertainment such as live music and other performances, organized events such as trivia nights and other contests, the display of audio or visual entertainment on TV, and games.

58. The First Amendment to the United States Constitution, as applied to Alaska through the Fourteenth Amendment, protects expressive and associative activities.

59. Absent the threat of enforcement by Defendant, Plaintiffs would provide entertainment without first seeking government permission, and they would allow games on their premises for their customers to enjoy.

60. On its face and as enforced by Defendants, the Entertainment Restrictions and LME Permit Scheme prevent Plaintiffs from fully exercising their First Amendment rights.

61. AS 04.09.320(e)(1) and 04.09.330(e)(1) are both content-based and speaker-based restrictions on Plaintiffs' freedom of speech and expression because they prohibit and restrict certain types of protected speech and apply only to certain speakers or speech facilitators (i.e., breweries and wineries).

#### Prior Restraint

#### (Permit Scheme)

62. The Live Music and Entertainment Permit requirement in AS 04.09.700(b) imposes an unconstitutional prior restraint on brewery and winery retail licensees.

63. The LME Permit Scheme requires Plaintiffs to obtain permission in advance to exercise their First Amendment rights on their own private property.

64. The LME Permit Scheme lacks sufficient substantive or procedural safeguards to withstand judicial scrutiny and fails to provide Plaintiffs and other brewery and winery retail licensees with swift judicial review of any adverse decision.

### Unconstitutional Conditions

#### (Entertainment Restrictions + Permit Scheme)

65. AS 04.09.320(e), AS 04.09.330(e), and AS 04.09.700 condition Plaintiffs' licenses on the surrender of their constitutional rights. Specifically, the law empowers Defendants to suspend, revoke, or refuse to renew brewery and winery retail licenses in response to violations of the challenged entertainment restrictions and permit scheme. Only by surrendering those rights and complying with the unconstitutional law may Plaintiffs retain their licenses.

66. Coercing licensees in this way unconstitutionally conditions Plaintiffs' licenses on their restraining the exercise of their First Amendment rights.

67. Neither the Entertainment Restrictions nor the LME Permit Scheme is narrowly tailored to further a compelling government interest. The

public health and safety of the people of the state is not advanced by prohibiting Plaintiffs from exercising their First Amendment rights to the fullest extent.

68. By restricting whether and how often Plaintiffs may host live entertainment and games on their premises, Defendants maintain and actively enforce a set of laws, practices, policies, and procedures under color of state law that deprive Plaintiffs of their right to free speech, in violation of the First Amendment.

69. Plaintiffs have no adequate remedy at law to compensate for the loss of this fundamental freedom. Plaintiffs have suffered and will continue to suffer irreparable injury unless the Entertainment Restrictions and LME Permit Scheme are declared unlawful, and Defendants are restrained from enforcing AS 04.09.320(e) and 04.09.330(e) and AS 04.09.700(b).

70. Plaintiffs are therefore entitled to declaratory and injunctive relief against continued enforcement of AS. 04.09.320(e) and AS 04.09.330(e) and AS 04.09.700(b).

## **SECOND CLAIM**

Violation of Free Speech, Art. I, Sec. 5 of the Alaska Constitution

(Entertainment Restrictions + Permit Scheme)

71. Plaintiffs reallege and incorporate all preceding paragraphs.

72. An actual and substantial controversy exists between Plaintiffs and Defendants. Plaintiffs have the right to provide to their customers entertainment such as live performances, customer events such as trivia nights and other contests, the display of audio or visual entertainment on TV, and various games to play.

73. Absent the threat of enforcement by Defendant, Plaintiffs would host entertainment without first seeking government permission, and they would allow games on their premises for their customers to enjoy.

74. AS 04.09.320(e)(1), AS 04.09.330(e)(1) and AS 04.09.700(b) are content-based and speaker-based restrictions on Plaintiffs' freedom of speech.

75. On its face and as enforced by Defendants, the Entertainment Restriction prohibits Plaintiffs from fully exercising their free speech rights under Art. I, Sec. 5 of the Alaska Constitution.

#### Prior Restraint

#### (Permit Scheme)

76. The LME Permit requirement in AS 04.09.700(b) imposes an unconstitutional prior restraint on brewery and winery retail licensees.

77. The LME Permit Scheme requires Plaintiffs to obtain permission in advance to exercise their Art. I, Sec. 5 free speech rights on their own private property.



78. The LME Permit Scheme lacks sufficient substantive or procedural safeguards to withstand judicial scrutiny and fails to provide Plaintiffs and other brewery and winery retail licensees with swift judicial review of any adverse decision.

### Unconstitutional Condition

#### (Entertainment Restrictions + Permit Scheme)

79. AS 04.09.320(e)(1), AS 04.09.330(e)(1), and AS 04.09.700 condition Plaintiffs' licenses on the surrender of their constitutional rights. Specifically, the law empowers Defendants to suspend, revoke, or refuse to renew brewery and winery retail licenses in response to violations of the challenged entertainment restrictions and permit scheme. Only by surrendering those rights and complying with this unconstitutional law may Plaintiffs retain their licenses.

80. Coercing licensees in this way unconstitutionally conditions Plaintiffs' licenses on their restraining the exercise of their free speech rights under the Alaska Constitution.

81. Neither the Entertainment Restrictions nor the LME Permit Scheme are narrowly tailored to further a compelling government interest. The public health, safety, and welfare of the people of Alaska is not advanced by prohibiting Plaintiffs from fully exercising their free speech rights under state law.

82. By restricting whether and how often Plaintiffs may host live entertainment and games on their premises, Defendants maintain and actively enforce a set of laws, practices, policies, and procedures that deprive Plaintiffs of their right to free speech, in violation of Art. I, Sec. 5 of the Alaska Constitution.

83. Plaintiffs have no adequate remedy at law to compensate for the loss of this fundamental freedom and will suffer irreparable injury absent an injunction restraining Defendants' enforcement of AS 04.09.320(e) and 04.09.330(e) and AS 04.09.700(b).

84. Plaintiffs are therefore entitled to declaratory and injunctive relief against continued enforcement of these laws.

### **THIRD CLAIM**

Violation of Equal Protection, Art. I, Sec. 1 of the Alaska Constitution

(Entertainment Restrictions + Permit Scheme)

85. Plaintiffs reallege and incorporate all preceding paragraphs.

86. Article I, Sec. 1 of the Alaska Constitution provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law" (Equal Protection).

87. Laws violate the Equal Protection provision when those similarly situated are subjected to different restrictions and burdens.

88. As licensed retailers authorized to allow on-premises consumption of alcohol, breweries, wineries, bars, restaurants, and pubs are all similarly situated. However, AS 04.09.320(e), AS 04.09.330(e), and AS 04.09.700 restrict breweries and wineries from hosting entertainment and games while allowing the other alcohol retail licensees to do so free of those restrictions.

89. The alcohol laws do not require bars, restaurants, or pubs to pay for advance permission to host live entertainment, nor do they limit the number of events these establishments can host under their retail licenses.

90. By restricting breweries and wineries from providing live music and entertainment, the law burdens Plaintiffs' fundamental rights guaranteed under the Art. 1, Sec. 1 (Rewards of Industry) and Art. 1, Sec. 5 (Free Speech) of the Alaska Constitution. At the same time, bars, restaurants, and pubs are not so constitutionally burdened.

91. The discriminatory singling out of breweries and wineries for different treatment does not protect the public health, safety, or welfare of the citizens of Alaska.

92. The discriminatory singling out of breweries and wineries for such treatment cannot be justified by a substantial--much less compelling--government interest. The discriminatory treatment advances economic protectionism, which does not constitute a legitimate government interest, much less a compelling one.

93. The discriminatory singling out of breweries and wineries for different treatment burdens the free speech and economic liberty rights of breweries and wineries, while allowing bar licensees to enjoy the exercise of these fundamental rights.

94. Therefore, AS 04.09.320(e), AS 04.09.330(e), and AS 04.09.700 violate the equal protection rights of breweries and wineries, both facially and as applied to Plaintiffs.

95. Plaintiffs have no adequate remedy at law to compensate for the loss of equal protection. They have suffered and will continue to suffer irreparable injury absent an injunction restraining Defendants' enforcement of AS 04.09.320(e) and 04.09.330(e) and AS 04.09.700(b).

96. Plaintiffs are therefore entitled to declaratory and injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional application of these laws.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs as to all counts and:

- A. Assume jurisdiction over this matter;
- B. Declare the challenged law unconstitutional on its face and as applied to Plaintiffs;


C. Permanently enjoin Defendants from enforcing the unconstitutional law;

D. Award Plaintiffs litigation costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and Alaska Rule of Civil Procedure 82(a);

E. Grant such other relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED this 20th day of February, 2024.

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