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**FILED**  
SUPERIOR COURT  
COUNTY OF LAKE

MAY 19 2021

Krista D. LeVine  
By Andres Perez  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LAKE

LANGTRY FARMS, LLC, a Delaware  
Limited Liability Company

Plaintiff,

v.

HUGH REIMERS, an individual;  
TORICK FARMS, LLC, a California  
Limited Liability Company; and  
DOES 1-20.

Defendants.

CASE NO. CV421774

**PLAINTIFF LANGTRY FARMS, LLC'S  
OPPOSITION TO DEFENDANTS' EX  
PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE**

Defendant Torick Farms, LLC ("Torick") seeks extraordinary relief from this Court to compel Plaintiff Langtry Farms, LLC ("Langtry") to do something plainly illegal: release wine to an unlicensed person for purposes of resale in California. Even if it were legal to release wine to Torick, it cannot and has not satisfied the exacting standard for a Temporary Restraining Order because ultimately it will not prevail on the merits – its principal argument that Langtry did not issue receipts is wrong. Langtry was legally required to do so and it did. Yet even if Torick could somehow still show it may prevail, this dispute can be solved with money. As such, the request for *ex parte* relief must be denied.

**I. BACKGROUND**

On May 3 of this year, Plaintiff Langtry commenced an action against Torick and its principal, Hugh Reimers to, *inter alia*, declare that the balance due on invoices provided to Torick for the storage of smoke-tainted wine surreptitiously delivered to Plaintiff's winery were subject to a valid warehouse lien. (Complaint, ¶¶ 5-8.) Smoke-tainted wine is wine that is chemically contaminated by wildfire smoke, which will ultimately interact with and be absorbed into the oak tanks and barrels which it is stored in. (Complaint, ¶ 17-18). Although Torick now purports to show unofficial screenshots of test results (Reimers Decl. Exhs. G-H) on unspecified lots of grapes, Langtry in fact has official test results from the leading provider of smoke taint testing, ETS Laboratories, showing significantly higher levels of smoke-taint compounds. (See Declaration of Joshua S. Devore Ex. A (showing guaiacol levels as high as 23.5 µg/L.)) ETS Laboratories, the provider of the tests, indicates that any guaiacol level above 6.0 is indicative of smoke taint in wine once it has been fermented. (*See* <https://etslabs.app.box.com/v/InterpretationGuidelines>.) All of Defendant's wine tested exceeded that threshold. (Devore Decl. Ex. A.)

Langtry thus billed Torick for the charges for storing what Langtry discovered to be smoke-tainted wine at Langtry's winemaking facility, including the costs for storage equipment that were expended by that storage – specifically, oak tanks and barrels that, once exposed to smoke tainted wine, Langtry cannot reuse. (Complaint, ¶¶ 32-35.) Thus, like any other storage container that cannot be used again once it holds the goods that are stored therein, Torick was billed for the costs of the storage containers. (*Id.* ¶ 36.)

As a bonded winery, Langtry is a warehouse subject to the typical warehouse lien provisions in the California Commercial Code (Cal. Comm. C. § 7201 *et seq.*) The winery issued appropriate, legally required documentation on receipt of the grapes for processing – and there is explicitly no requirement in the Commercial Code that a warehouse receipt be in any form. (*See* Devore Decl. Ex. B (receipts on delivery); Cal. Comm. C. § 7202(a).) Given Defendants' non-compliance with ABC regulations and licensing requirements in general, it is perhaps

1 unsurprising that they have not also adequately and properly maintained their records of delivery  
2 and the receipts provided. But the suggestion that there are no receipts is simply false. There are  
3 specific receipts for each lot delivered to Langtry by Torrick that comprise the wine remaining,  
4 and they are attached to the accompanying Devore Declaration as Exhibit B.

5 Langtry timely informed defendants that it would seek to exercise its lien if its invoice  
6 was not paid. When defendants objected to the propriety of the lien, Langtry sought declaratory  
7 relief from this Court to confirm the propriety of the lien. (Complaint, First Cause of Action,  
8 ¶¶ 38-48.) That ultimate issue in the action requires full briefing on ordinary notice following any  
9 necessary discovery.

## 10 **II. LEGAL ARGUMENT.**

11 Torick fails to establish the basic elements for a TRO. It is unlikely to prevail on the  
12 merits or to suffer irreparable injury; and even if it could, the equities weigh against  
13 an injunction.

### 14 **A. California Law Imposes a Stringent Legal Standard for Evaluating an *Ex Parte* Application for a TRO**

15 In general, trial courts cannot grant an injunction absent a clear showing of two elements:  
16 (1) irreparable harm to the moving party if the injunction is not issued; and (2) a likelihood of  
17 success on the merits. (Civ. Proc. Code § 526(a)(2); *Robbins v. Superior Court*, (1985) 38 Cal. 3d  
18 199, 206.) Where a party seeks a temporary restraining order on an *ex parte* basis, they must  
19 specifically present competent proof that a “great or irreparable injury will result to the applicant  
20 before the matter can be heard on notice.” (Civ. Proc. Code § 527(c)(1); *see also* Cal. Rule Court  
21 3.1202(c) (requiring that a TRO “applicant must make an affirmative factual showing in a  
22 declaration containing competent testimony based on personal knowledge or irreparable harm,  
23 immediate danger, or any other statutory basis for granting relief *ex parte*.”).) Indeed, under clear  
24 California law, “[a]n injunction cannot issue in a vacuum based on the proponents’ fears about  
25 something that *may* happen in the future.” (*Korean Philadelphia Presbyterian Church v.*  
26 *California Presbytery*, (2000) 77 Cal. App. 4th 1069, 1084 (emphasis added).) A TRO is an  
27 “extraordinary remedy” and granting such relief is entirely “discretionary.” (*Adams v. Dep’t of*  
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1 *Motor Vehicles*, (1974) 11 Cal. 3d 146, 156 (citing 2 Witkin, Cal. Procedure (2d ed. 1970)  
2 Provisional Remedies, § 78, pp. 1516-1517))).)

3 An “irreparable injury” is one that cannot be “fully compensated by the payment of  
4 damages.” (*Tahoe Keys Property Owners’ Assn. v. State Water Resources Control Bd.*, 23 Cal.  
5 App. 4th 1459, 1471 (1994).) Accordingly, an injunction cannot be granted where an adequate  
6 monetary remedy exists. (Civ. Proc. Code § 526(a)(4).) In the specific context of seeking  
7 injunctive relief for a breach of contract, the moving party must demonstrate that “monetary relief  
8 would not afford adequate relief or that it would be extremely difficult to ascertain the amount of  
9 damages.” (*Pacific Decision Sciences Corp. v. Superior Court*, 121 Cal. App. 4th 1100, 1110  
10 (2004).)

11 The Court must also balance the equities and consider the interim harm that the defendant  
12 is likely to sustain if the restraining order were denied as compared to the harm that the plaintiff  
13 is likely to suffer if the order were issued. (*Church of Christ in Hollywood v. Superior*  
14 *Court* (2002) 99 Cal.App.4th 1244, 1251 (citing *IT Corp. v. County of Imperial* (1983) 35 Cal.3d  
15 63, 69-70).) While the trial court’s determination is guided by a mix of these factors, a trial court  
16 may not grant a restraining order, *regardless* of the balance of interim harm, unless there is some  
17 possibility that the plaintiff will ultimately prevail on the merits. (*Id.* at 1251-1252 (citing *Butt v.*  
18 *State of California* (1992) 4 Cal.4th 668, 678).)

19 **B. There Is No Irreparable Harm**

20 Torick ultimately complains that Langtry is storing its wine pending resolution of this  
21 dispute rather than allowing Torick to illegally sell it. Even assuming this is true, there is no  
22 irreparable harm because wine can be safely stored while the matter is heard on ordinary notice.  
23 Indeed, wine is routinely stored for long periods of time. And even if it were not, there is no  
24 evidence whatsoever that the generic bulk wine that Langtry has in its tanks is some special,  
25 irreplaceable good the loss of which cannot simply be compensated by the payment of damages.  
26 Even were one or both of the planned purchasers of the wine to walk away from the contract and  
27 look elsewhere (Torick offers no evidence from either purchaser that this is in fact the case), there  
28

1 is no evidence nor suggestion that the market for bulk wine would evaporate. If this wine were to  
2 ultimately be completely unsalable in a tight market where large portions of the 2020 harvest  
3 were destroyed, that would say more about the wine than Langtry's actions. Yet Torick also  
4 claims the wine is worth nearly \$1 million, though much of it remains uncontracted. Torick  
5 cannot and does not reconcile why it will be irreparably harmed if only a portion of that wine is  
6 not sold now; yet will not be irreparably harmed while Plaintiff holds the reminder, as it offers no  
7 evidence from the supposed buyers either that they will terminate their contracts, nor that even if  
8 they did terminate contracts Torick would be unable to sell the wine to someone else for any  
9 different amount.

10 Nor is there any credulity to the suggestion that any delayed delivery of wine could  
11 somehow damage Torick's reputation in the wine industry given the substantial reporting on  
12 Defendant Reimers's prior conduct. (*See, e.g., Sonoma County Wine Executive's Vineyard*  
13 *Business Firm Accused of Water Quality Violations*, THE PRESS DEMOCRAT (Aug. 13, 2019.);  
14 California Regional Water Quality Control Board, North Coast Region, Cleanup and Abatement  
15 and 13267 Order No. R1-2019-0045 for Hugh Reimers and Krasilsa Pacific Farms LLC.)<sup>1</sup> And in  
16 any event such supposed reputation damage is entirely speculative and merely "fears about  
17 something that may happen in the future." (*Korean Philadelphia Presbyterian Church, supra*, 77  
18 Cal. App. 4th at 1084.)

19 The harm that would justify a TRO must be "irreparable." (*Tahoe Keys*, 23 Cal. App. 4th  
20 at 1471 (1994).) An injunction cannot be granted where an adequate monetary remedy exists.  
21 (Civ. Proc. Code § 526(a)(4).) Because Torick claims a failure to deliver a generic good which it  
22 claims it has a contract to sell at a set price, damages are easily calculable. As such, Torick fails  
23 to establish the irreparable injury standard for its TRO. Any inquiry into the merits is thus  
24 unnecessary.

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27 <sup>1</sup> Available at:  
28 [https://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2019/19\\_0045\\_Hugh%20Reimers%20Krasilsa%20Pacific%20Farms%20LLC\\_CAO.pdf](https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2019/19_0045_Hugh%20Reimers%20Krasilsa%20Pacific%20Farms%20LLC_CAO.pdf)

**C. Torick Cannot Prevail On The Merits**

Even if Torick could show somehow that it would be irreparably harmed by any modest delay in resolving this dispute, it cannot show it will prevail on the merits. Langtry has duly invoiced Torick for charges incidental to the storage of its wine, including the costs of the oak tanks and barrels in which the wine was stored. (Complaint ¶ 7; Reimers Decl. Exh. E.) Langtry issued the appropriate receipts on delivery (Devore Decl. Ex. B), as it was required to do, and has now billed Defendants appropriately in the absence of any specific contract, which Defendants concede. As such Langtry’s warehouse lien is valid and requires Langtry to be paid prior to the release of any remaining wine that might be in excess of the balance due – a speculative proposition at the moment.

But there is a more basic problem for Torick that prevents it from prevailing: It has no license to sell wine in California.

**i. Langtry cannot released the wine to Torick because Torick has no license to sell wine in California**

The California Constitution and Alcoholic Beverage Control Act regulate who can deal in wine in this State, and the permissions attendant to each type of license. (*See* Bus. & Prof. C. (“B.P.C.”) Sec. 23000 *et seq.*; *see also* <https://www.abc.ca.gov/licensing/license-types/>). A licensed winegrower holding a “Type 02” license, such as Langtry, can only sell wine to another person for resale if that person holds a license. (B.P.C. § 23358(a).) Other license types allow wine grape growers to deal in bulk wine when made solely from those growers’ grapes. (B.P.C. § 23358.3 (describing a “wine grape grower's storage license,” also referred to as a “Type 29” license.) A “Type 17” wholesaler license allows for incidental sales to other licensees, as well as retailers. (B.P.C. § 23027.) Langtry holds Type 02, 17 and 29 licenses. (*See* <https://www.abc.ca.gov/licensing/license-lookup/single-license/?RPTTYPE=14&COMPANY=Y&LICENSEE=langtry>). Langtry must comply with the terms of its licenses in dealing in wine.

Conversely, “[n]o person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division.” (B.P.C. Sec. 23300; *see also* Cal. Const. Art. XX,

1 Sec. 22 (“It shall be unlawful for any person other than a licensee of said department to  
2 manufacture, import or sell alcoholic beverages in this State.”)) Defendants Reimers and Torick  
3 hold no active ABC licenses whatsoever. Public records show that Torick has no license and  
4 never has. (See [https://www.abc.ca.gov/licensing/license-lookup/single-  
6 license/?RPTTYPE=14&COMPANY=Y&LICENSEE=Torick](https://www.abc.ca.gov/licensing/license-lookup/single-<br/>5 license/?RPTTYPE=14&COMPANY=Y&LICENSEE=Torick)). Reimers previously held a license  
7 through an import company, but it was revoked in 2011. (See  
8 [https://www.abc.ca.gov/licensing/license-lookup/single-  
10 license/?RPTTYPE=14&COMPANY=N&LICENSEE=Reimers](https://www.abc.ca.gov/licensing/license-lookup/single-<br/>9 license/?RPTTYPE=14&COMPANY=N&LICENSEE=Reimers)). Although Chapter 2 of the ABC  
11 Act lists numerous exemptions allowing for the unlicensed sale of wine (B.P.C. § 23100 *et. seq.*),  
12 none apply here. As such, it is illegal for Torick or Reimers to sell wine, even bulk wine, where  
13 they hold no licenses to do so. And thus, Langtry is prohibited from providing them with wine for  
14 their express intention to resell it. The Court cannot order Langtry to do so either. It would be  
15 illegal and unconstitutional.

16  
17 **ii. Langtry has a valid warehouse lien that must be paid prior to the**  
18 **release of the wine**

19 But even assuming it were legal to release wine to Torick, pursuant to Commercial Code  
20 Sections 7206 and 7209, Langtry has a right to enforce its lien on Torick’s wine to recoup the  
21 charges Langtry incurred from storing it. This includes the right to enforce the lien by selling the  
22 wine before giving Torick any supposed “excess” proceeds.

23 First, Defendants falsely state, relying on several irrelevant out-of-state bankruptcy cases,  
24 that Langtry has no warehouse lien because it never received a warehouse receipt. (TRO  
25 Application, p. 4-5.) That is incorrect: a receipt for delivery was in fact prepared (Devore Decl.  
26 Ex. B), as it must be for tracking grape and wine movements, and the California Commercial  
27 Code is explicit that “[a] warehouse receipt need not be in any particular form.” (Comm. C.  
28 § 7202(a).) Indeed, as a bonded winery Langtry is a warehouse subject to the typical warehouse  
lien provisions in the California Commercial Code:

If goods, including distilled spirits and agricultural commodities, are stored under  
a statute requiring a bond against withdrawal or a license for the issuance of  
receipts in the nature of warehouse receipts, a receipt issued for goods is deemed

to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

(Cal. Comm. C. § 7201(b).) On its face, this provision makes clear not only that a bonded winery is covered by the warehouse lien provisions, but also that “a receipt issued for goods is deemed to be a warehouse receipt.”

Any warehouse has a lien on goods, including “for charges for storage...in relation to the goods...” (Comm. Code, Sec. 7209(a).) A warehouse “may require payment of any charges and removal of the goods from the warehouse” with at least 30 days notice and can enforce their lien on the goods for failure to timely pay. (Comm. Code, Sec. 7206(a).) Under Section 7206(a), “charges” may include costs to clean or repair warehouse property due to misuse or problematic usage by the entity storing goods there. For example, in *Browning v. River Farms Co. of California*, (1927) 82 Cal. App. 361, the Court found that a warehouse could take reasonable steps to protect the stored property and the surrounding property by re-sacking grain where defective sacks gave out and grain was pouring onto the floor. The Court found that the warehouse could charge the grain owner for the re-sacking fees, explaining that the warehouse was not limited to the remedy of selling the grain to pay for the re-sacking but could charge for the costs expended to preserve and protect the property being stored, which also impacted the other property stored at the site.

Here, Torick stored smoke-tainted wine in barrels and tanks owned by Langtry, and like the re-sacking fees resulting from the defective sacks, Langtry can assess charges for the containers exhausted by the storage and transferring of the wine to preserve its barrels and to prevent smoke taint to other wine within the facility. Torick’s conclusory claims that the barrels are 40 years old and have stored millions of barrels of wine hold no weight in this analysis – regardless of their age, they have now been exposed to Torick’s contaminated wine and that impacts their properties, reputation, and marketability for future use. Thus, like a used sack of grain that needs replacement, the tanks and barrels were consumed by the storage and Torick is appropriately charged for those fees.

If Torick does not pay for these charges, Langtry can exercise its right to enforce its lien



1 against Torick Farms, and sell the wine to cover the outstanding amounts due for storage.  
2 (Comm. C. § 7206(e))("A warehouse may satisfy its lien from the proceeds of any sale or  
3 disposition under this section but shall hold the balance for delivery on the demand of any person  
4 to which the warehouse would have been bound to deliver the goods.")

5 Defendants have refused to pay the invoiced amounts for the smoke-tainted wine, but  
6 contend that the value of the goods exceeds the value of the asserted lien, and that therefore  
7 Langtry must deliver the remainder of the goods in excess of the value of the invoice. However,  
8 by the plain language of the Section 7206(e), Langtry need not deliver the balance of the wine  
9 until after its lien is satisfied. This is particularly required because the value of the wine that may  
10 remain is inherently speculative and unknown until a willing buyer for the remaining supposedly-  
11 uncontracted smoke-tainted wine is found. As such, Torick is unlikely to prevail on its claims  
12 even if it were legal for it to sell wine.

13 **D. The Balance Of Equities Weighs Firmly Against Torick.**

14 In evaluating interim harm, the trial court must compare the injury to the defendant in the  
15 absence of an injunction to the injury the plaintiff is likely to suffer if an injunction is issued.  
16 *Shoemaker v. County of Los Angeles*, 37 Cal.App.4th 618, 633 (1995). Here, the equities favor  
17 denial of the Application, because if the injunction is issued, Langtry will be forced to violate  
18 State laws and Constitution, whereas Torick can be adequately compensated with money if it  
19 prevails on the merits. Langtry however faces the prospect that if monies are paid to Reimers, he  
20 may in turn be forced to pay those sums to other creditors or, as an Australian citizen, may simply  
21 leave the Country without paying.

22 In any event, Langtry would not legally be able to comply with the injunction sought by  
23 Torick without violating The California Constitution and Alcoholic Beverage Control Act.  
24 Neither Defendant Reimers nor Torick holds an active ABC license of any kind. Thus, it would  
25 be inequitable to grant the injunction and force Langtry to either disobey a court order or violate  
26 State law.

27 Even if it were somehow legal to carry out the sale of the wine without Torick being  
28

properly licensed, Torick will not be harmed if no injunction is issued. The wine will be safely stored while the matter is heard on ordinary notice; and if Torick eventually prevails, the wine could be transferred to Torick. Otherwise, the value of Torick's sale to third-parties would be paid in damages and Torick would be made whole. Again, this is a matter that can be solved with money; an improper subject for a TRO. (*Tahoe Keys Property Owners' Assn.*, *supra*, 23 Cal. App. 4th at 1471; Civ. Proc. Code § 526(a)(4).)

**III. CONCLUSION**

In sum, Torick's request for extraordinary relief without full notice is improper, and must be denied, and the OSC should not enter as Torick cannot prevail given its unlicensed status.

DATED: May 19, 2021

DICKENSON, PEATMAN & FOGARTY



By: \_\_\_\_\_

JOSHUA S. DEVORE

Attorney for Plaintiff

LANGTRY FARMS, LLC

**PROOF OF SERVICE**

I am employed in the County of Napa, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Dickenson Peatman & Fogarty P.C., 1455 First Street, Suite 301, Napa, CA 94559. On the date indicated below, I served the following document(s): **PLAINTIFF LANGTRY FARMS, LLC'S OPPOSITION TO DEFENDANTS' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE; DECLARATION OF JOSHUA S. DEVORE IN SUPPORT THEREOF** on the person(s) below, as follows:

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☒ **(BY ELECTRONIC SERVICE)** I caused a courtesy copy of the document(s) to be sent to the person(s) at the electronic notification address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Barbara Barrera