

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAYUGA NATION, a federally recognized
Indian Nation; and

LAKESIDE ENTERPRISES, INC.,

Plaintiffs,

-against-

5:25-CV-1312
(ECC/ML)

NEW YORK STATE LIQUOR AUTHORITY;

LILY FAN, in her official capacity as the Chair
and Commissioner of the New York State Liquor Authority;

EDGAR DE LEON, in his official capacity as a
Commissioner of the New York State Liquor Authority; and

JOHN MAYA, in his official capacity as a
Commissioner of the New York State Liquor Authority,

Defendants.

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANTS'
MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE
12(b)(1) AND 12(b)(6).**

LETITIA JAMES
Attorney General of the State of New York
Syracuse Regional Office
Attorney for Defendants
300 S. State Street, Ste. 300
Syracuse, NY 13202

By: Aimee Cowan, Esq.
Assistant Attorney General, of Counsel
Bar Roll No. 516178
Telephone: (315) 448-4800
Fax: (315) 448-4853
E-mail: Aimee.Cowan@ag.ny.gov

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Defendants respectfully submit this reply memorandum of law in further support of their motion to dismiss plaintiffs’ second amended complaint (“SAC”) pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6).

ARGUMENT

POINT I: PLAINTIFFS’ CLAIM PURSUANT TO 18 U.S.C. § 1161 SHOULD BE DISMISSED

A. Plaintiffs fail to state a claim pursuant to 18 U.S.C. § 1161

As an initial matter, plaintiffs fail to acknowledge binding Second Circuit precedent that to the extent they seek declaratory or injunctive relief against defendants based on violations of state law, they are barred from doing so. See Bad Frog Brewery, Inc. v. New York State Liquor Auth., 134 F.3d 87, 93 (2d Cir. 1998). Regardless, plaintiffs argue that the legislative record for § 1161 supports their position that they have plausibly alleged a claim under that statute. ECF No. 20 at 15-16. The history, however, actually bolsters defendants’ position—as plaintiffs cite, the bill’s sponsor “stressed that Indian nations could ‘regulate internally’ **but would still be required to ‘comply with State law.’**” Id. at 16 (emphasis added).

Plaintiffs’ assertion that the statute does not authorize state officials to impose “extra-statutory conditions, subjective policy judgments, or discretionary barriers,” id., and their cite to Judge Blackmun’s non-binding dissenting opinion in Rice v. Rehner, 463 U.S. 713, 741 (1983), is entirely misleading. First, the standards being applied to the Cayuga Nation are the same standards applied to all applicants, as codified in state law. Second, plaintiffs are asserting that because the Cayuga Nation has enacted an Alcoholic Beverage Control Ordinance that was published in the Federal Register, they should automatically be granted a license by the NYSLA, but that is not what the legislative history supports. And the statute does *not* provide for a private right of action for Tribes to assert against the State for allegedly imposing “unlawful conditions” on alcohol

licensure in Indian country. The only authority cited in support of this contention, Flandreau Santee Sioux Tribe v. Gerlach, 155 F. Supp. 3d 972 (D.S.D. 2015), is readily distinguishable for the reasons previously set forth. ECF No. 17-1 at 21-22.

Plaintiffs do not dispute that NYSLA is “vested with discretion when regulating ordinary, non-Indian applicants.” ECF No. 20 at 21. They then essentially contend that those standards should not be applied to the plaintiffs. Id. They further appear to take issue with the statutory standard under ABCL § 2, claiming that it is “not a neutral rule,” id. at 22. Section 1161 does not mandate that the NYSLA must grant plaintiffs a liquor license simply because the Nation has agreed that the sale of alcohol on its property is legal. In accordance with Rice, infra, the plaintiffs are subject to the NYSLA regulatory scheme under the Alcoholic Beverage Control Law, which the NYSLA applies to all applicants, Indian and non-Indian, uniformly because it has the authority to do so. See also Harrison v. PCI Gaming Auth., 251 So. 3d 24, 33 (Ala. 2017) (on remand “the circuit court should consider whether subject-matter jurisdiction is affected by the fact that the alleged tortious conduct of the tribal defendants entails a violation of Alabama's statutory and regulatory scheme for the sale of alcohol in Alabama, *a scheme to which Congress has expressly declared the Tribe to be subject*”) (emphasis added) (citing 18 U.S.C. § 1161¹); Van Kruiningen v. Plan B, LLC, 485 F. Supp. 2d 92, 97–98 (D. Conn. 2007) (“tradition simply has not recognized a sovereign immunity or inherent authority in favor of liquor regulation by Indians,” rather, there is a “historical tradition of concurrent state and federal jurisdiction over the use and distribution of alcoholic beverages in Indian country [] justified by the relevant state interests involved.”) (citing Rice v. Rehner, 463 U.S. 713, 722 (1983) (noting states' “unquestionable interest in the liquor traffic that occurs within its borders”); see also 98 Op. Conn. Att'y Gen. 13, 1998 WL 1109417

¹ Inadvertently cited in the court's decision as § 1611.

(1998) (interpreting Rice as holding “that state laws were not preempted [by operation of federal law] and that in fact, 18 U.S.C. § 1161 explicitly delegated to the states and to the tribes Congress’ authority to regulate liquor transactions on Indian reservations” and “[w]hile the Tribes have concurrent authority to regulate liquor sales within their borders, they may not sell and distribute alcoholic beverages unless they comply with state law”).

For the reasons previously stated and for the reasons stated above, plaintiffs’ § 1161 claim should be dismissed.

B. Ex parte Young Bars Plaintiffs’ 18 U.S.C. § 1161 Claim

Plaintiffs contend that they are permitted to pursue the relief they seek against the NYSLA because they are entitled to pursue prospective injunctive relief against a “state actor.” ECF No. 20 at 27-28. In support of that argument, they cite Emmons v. City Univ. of N.Y., 715 F. Supp. 2d 394, 407 (E.D.N.Y. 2010) and Cayuga Nation v. New York State Gaming Comm’n, 775 F. Supp. 3d 651, 662 (N.D.N.Y. 2025). However, the Court in Emmons held that Ex parte Young could apply with respect to prospective injunctive relief against *state officials*, it did not find the same for *state agencies*. 715 F. Supp. 2d at 407. Cayuga Nation supports defendants’ position, not plaintiffs’, because the court held that the state agency defendant was immune from suit and the action was dismissed. 775 F.Supp.3d at 663. Consequently, the NYSLA should be dismissed from this action as well.

With respect to the NYSLA Chair and Commissioners, plaintiffs contend that they do not seek retrospective relief and are thus not barred from injunctive relief under the Eleventh Amendment. Defendants reiterate that while plaintiffs *argue* that the relief they seek is prospective, the relief they *actually* seek is retrospective in nature. Plaintiffs’ contention that “[u]nless restrained, Defendants will apply the same discretionary ‘public convenience and advantage’

standards to future applications by the Nation and its entities” is a speculative conclusion that the SAC cannot support. ECF No. 20 at 29. First, as previously mentioned, plaintiffs already hold two active NYSLA-issued licenses to sell alcohol on Reservation Land at convenience stores, see ECF No. 16 ¶ 112; ECF No. 16-2 at 19, which undercuts any claim that the Nation has been treated differently than similarly situated non-Indian applicants or would be treated differently in the future. Plaintiffs do not even allege that they have any pending applications with the NYSLA, to which the alleged discriminatory regime would be applied. See e.g. Oliveira v. Schwartz, No. 23-CV-07427 (PMH), 2025 WL 343609, at *5 (S.D.N.Y. Jan. 30, 2025). Second, plaintiffs fail to address defendants’ assertion that to the extent they seek declaratory or injunctive relief against defendants based on violations of state law, they are barred from doing so. See Bad Frog Brewery, Inc., 134 F.3d at 93.

Third, plaintiffs fail to address defendants’ contention that to the extent they characterize the relief they seek as prospective by seeking an injunction directing defendants to refrain from misconduct or other wrongdoing in the future, (often referred to as "obey the law injunctions"), such an injunction is “not favored.” See ECF No. 17-1 at 35-36. Finally, an injunction here would in substance reverse the NYSLA’s prior determination as to plaintiffs’ liquor license application. In other words, an injunction with respect to the license application decision is nothing less than an annulment of the NYSLA’s determination on the application on the grounds that the Chair and Commissioners misapplied the law when rendering their determination. Using plaintiffs’ logic, this would mean that any agency determination is an ongoing violation of federal law and federal courts would become *de facto* guardians of state administrative law.

For the reasons stated above, plaintiffs’ § 1161 claim should be dismissed.

POINT II: PLAINTIFFS’ 42 U.S.C. § 1983 CLAIM SHOULD BE DISMISSED

Plaintiffs’ opposition does not appear to contest that NYSLA is immune from suit with respect to their §1983 claim. See ECF No. 20 at 29-35. In this District, “when a non-movant fails to oppose a legal argument asserted by a movant, the movant’s burden with regard to that argument is lightened, such that, in order to succeed on that argument, the movant need only show that the argument possesses facial merit, which has appropriately been characterized as a ‘modest’ burden.” Jenkins v. County of Washington, 126 F. Supp. 3d 255, 277 (N.D.N.Y. 2015). Here, defendant NYSLA has satisfied that modest burden.

With respect to the NYSLA Chair and Commissioners, plaintiffs contend that they are proper defendants because they seek prospective relief. ECF No. 20 at 32. Again, for the reasons stated above, plaintiffs are actually seeking retrospective relief, for the reasons previously discussed in defendants’ opening brief and under Point I, supra. Plaintiffs admit that they currently hold NYSLA issued licenses, and do not allege that they were discriminated against in the past with respect to those licenses. See gen. ECF No. 20 at 30. Consequently, to the extent they claim that they are seeking prospective relief that they will be discriminated against in the future—and not relief for denial of the instant license application—that logic holds no weight.

Furthermore, plaintiffs contend that they have plausibly pled an action under the Equal Protection Clause of the Fourteenth Amendment because the SAC pleads specific facts showing that defendants subjected plaintiffs to “scrutiny, suspicion, and procedural burdens not imposed on non-Indian applicants, grounded expressly in the Nation’s sovereign status and in unfounded assumptions about its ability to comply with the law.” ECF No. 20 at 33. However, plaintiffs’ SAC is rife with conclusory allegations, for example, alleging that defendants repeatedly adjourned plaintiffs’ application, ECF No. 16 ¶ 114, and factors like plaintiffs’ refusal to promise that the licensed premises would remain at a fixed square footage, “which do not appear in the ABC Law

or 18 U.S.C § 1161,” which demonstrate defendants’ actions as discriminatory. Id. ¶ 115. None of these alleged factors plausibly plead discrimination based on plaintiffs’ protected status and are well within the Chair and Commissioners’ discretion under ABCL § 2.

Even at the pleading stage, “the plaintiff must [] ‘present facts sufficient to support an inference of intentional ... discrimination.” Benjamin v. Town of Islip, No. 20 CV 56 (ENV)(LB), 2021 WL 8344132, at *7 (E.D.N.Y. Aug. 12, 2021), report and recommendation adopted, No. 20-CV-56 (ENV) (LB), 2022 WL 1090608 (E.D.N.Y. Apr. 12, 2022) (citations and quotations omitted). As the Court decided in Benjamin, supra, and as is squarely on point here, when plaintiffs have failed to describe any similarly situated comparators, such failure dooms their selective enforcement claim. Plaintiffs merely needed to plead that they are “roughly equivalent” to comparators or that there is a ‘reasonably close resemblance’ between a plaintiff’s and comparator’s circumstances” but the SAC fails to do that. Id., citing Hu v. City of New York, 927 F.3d 81, 90-91, 93 (2d Cir. 2019).² For the reasons stated above, plaintiffs’ Section 1983 claim should be dismissed.

POINT III: PLAINTIFFS’ 42 U.S.C. § 1981 CLAIM SHOULD BE DISMISSED

As an initial matter, plaintiffs’ opposition does not address defendants’ contention that Section 1981 claims against the NYSLA are barred under the Eleventh Amendment. Defendants are thus entitled to a lightened burden, which they have satisfied. See Jenkins, 126 F. Supp. 3d at 277; see also Silva v. Farrish, 47 F.4th 78, 84 (2d Cir. 2022) (Ex parte Young does not allow for prospective relief against state agencies).

² Although plaintiffs do not specifically allege a “class-of-one” theory, in the event their SAC is interpreted to contain such a claim, the pleading standard for that theory is even more rigorous, requiring a plaintiff to show an extremely high degree of similarity between themselves and the persons to whom they compare themselves. Benjamin, 2021 WL 8344132 at *7.

Regardless, plaintiffs’ opposition asserts that they are permitted to proceed with their claim pursuant to Section 1981 under Ex parte Young because they have alleged ongoing violations of federal law against the Chair and Commissioners in their official capacities. ECF No. 20 at 38. Plaintiffs cite no authority in support of their contention that they seek prospective relief in this case, except to reference a provision in their SAC that states plaintiffs “reasonably anticipates that any future license applications submitted by the Nation or its entities will be subject to the same discriminatory and unlawful licensing regime, unless enjoined by this Court.” Id. at 38³.

As previously argued in defendants’ opening brief, Plaintiffs cannot make an “end run around the Eleventh Amendment[]” by seeking a declaration or an injunction based solely on past violations of federal law. See ECF No. 17-1 at 41-42; see also Doe v. United States, No. 3:24-CV-1146 (VDO), 2025 WL 2740575, at *8 (D. Conn. Sept. 26, 2025) (Allegations of “isolated past incidents, in conjunction with conclusory language requesting injunctive relief in the form of ‘nullification’ ... is insufficient for purposes of *Ex parte Young*.”) (citing Kelsey v. Kessel, No. 22-CV-03774, 2024 WL 1020522, at *4 (S.D.N.Y. Mar. 8, 2024). Accordingly, this claim should be dismissed.

POINT IV: PLAINTIFFS’ 42 U.S.C. § 1985 CLAIM SHOULD BE DISMISSED

Here, none of plaintiffs’ SAC allegations plausibly plead a “meeting of the minds” to deprive them of equal protection of the laws or of equal privileges, instead making general allegations that the Commissioners engaged in “shared discussions, coordinated actions and mutually reinforcing decision” to obstruct and deny plaintiffs’ application. Plaintiffs’ general

³ Notably, as previously mentioned in their opening brief, plaintiffs admittedly already hold two active NYSLA-issued licenses to sell alcohol on Reservation Land at convenience stores. ECF No. 16 ¶ 112; see e.g. ECF No. 16-2 at 19. This further confirms that plaintiffs’ assertion that they fear future license applications submitted by the Nation or its entities will be subject to the same discriminatory and unlawful licensing regime is an attempt to avoid Ex parte Young prohibition.

allegations that the Chair and Commissioner defendants acted in concert, without more, does not give rise to the inference that they agreed to engage in *unlawful conduct* against plaintiffs. See Walker v. O'Connor, No. 22 Civ. 581, 2022 WL 2341420, at *5 (N.D.N.Y. June 29, 2022).

Plaintiffs further contend that the intra-corporate conspiracy doctrine is inapplicable here because defendants are alleged to have acted “other than in the normal course of their corporate duties” or “in pursuit of personal interests wholly separate and apart from the entity.” ECF No. 20 at 40. Plaintiffs’ authorities cited in support of their contention are inapplicable here; Cooper v. Clancy, 2023 U.S. Dist. LEXIS 197522 (N.D.N.Y. Nov. 3, 2023) was decided on a motion *in limine* just before trial, not on a motion to dismiss, and both Cooper and Vicente v. Ayotte, 2025 LX 16152 (D. Conn. Dec. 2, 2024) involved correction officers who were alleged to have used excessive force and then agreed to cover up the alleged assaults by destroying or covering up evidence.

Indeed, the only exception to the application of the intra-corporate conspiracy doctrine is where the “plaintiff adequately alleges that each defendant possessed an independent, personal conspiratorial purpose, wholly separate and apart from the entity.” Moss v. Bd. of Educ. of Sachem Cent. Sch. Dist., No. 22-CV-6212(JS)(SIL), 2024 WL 3328637, at *14 (E.D.N.Y. July 8, 2024), aff’d, No. 24-2096-CV, 2025 WL 946417 (2d Cir. Mar. 28, 2025) (citing Broich v. Inc. Vill. of Southampton, 650 F. Supp. 2d 234, 247 (E.D.N.Y. 2009)). Plaintiffs’ SAC does not make those factual allegations. See also Guity v. Uniondale Union Free School District, 2017 WL 9485647, at *28 (E.D.N.Y. 2017) (finding intra-corporate conspiracy doctrine required dismissal of plaintiff’s conspiracy claim where “plaintiff d[id] not allege that the Village Board trustees, mayor, former and current chief of police, or any other Village entity, were effectively acting as separate entities in carrying out the alleged conspiracy to terminate plaintiff’s employment”).

Lastly, the Ex parte Young exception does not apply here because, for the reasons previously stated, plaintiffs seek retrospective relief. For the reasons stated in defendants' opening brief and stated above, plaintiffs' claim pursuant to 42 U.S.C. § 1985 must be dismissed.

POINT V: PLAINTIFFS' CLAIMS BROUGHT PURSUANT TO ARTICLE 1, SECTION 11 OF THE NEW YORK STATE CONSTITUTION SHOULD BE DISMISSED

As an initial matter, plaintiffs contend that this Court should exercise supplemental jurisdiction over their state court claims. ECF No. 20 at 41-42. Even if this Court were to determine that the plaintiff does have any viable claim(s) under State law (which defendants do not concede), since plaintiff's federal claims must be dismissed as a matter of law for the reasons mentioned under Points I-IV, this Court should decline to exercise its supplemental jurisdiction over any state claim based on dismissal of the federal claims. See 28 U.S.C. § 1367(c)(3); Groom v. New York State Dep't of Corr. & Cmty. Supervision, 2025 WL 2772054, at *16 (N.D.N.Y. Sept. 29, 2025).

Plaintiffs further contend that defendants' reliance on Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984), which establishes that "[t]he Eleventh Amendment bars federal suits against state officials on the basis of state law" see id. at 106, is misplaced because the allegations in Pennhurst were different than the allegations in the instant matter, which "target intentional discrimination...." under Article 1, Section 11 of the New York State Constitution. ECF No. 20 at 43. Plaintiffs cite no authority in support of their position, likely because no such authority exists. To the contrary, see Garcia v. Paylock, No. 13-CV-2868 KAM, 2014 WL 298593, at *3 (E.D.N.Y. Jan. 28, 2014) ("to the extent plaintiff alleges that defendant has violated his rights under the Article 1, § 11 of the New York State Constitution, the State's sovereign immunity also bars plaintiff's claims against the State") (collecting cases); Weaver v. New York State Unified Ct. Sys., No. 1:23-CV-1518 (GTS/DJS), 2024 WL 3066906, at *13 (N.D.N.Y. June 20, 2024), appeal

dismissed, No. 24-3178, 2025 WL 1607636 (2d Cir. Apr. 16, 2025) (dismissing plaintiff's claim pursuant to Article 1, Section 11 of the New York State Constitution on sovereign immunity grounds); see also Dawkins v. State Univ. of New York at Cortland, 2024 WL 3377938, at *7 (N.D.N.Y. July 11, 2024) (holding that NYSHRL discrimination claims against state agencies barred by sovereign immunity).

Finally, plaintiffs fail to address defendants' legal argument that even if this claim were not barred by sovereign immunity, "Federal courts in this circuit have [] uniformly held that no private right of action exists for violations of the New York State Constitution where the plaintiff has an alternative remedy under § 1983 for violations of parallel provisions of the U.S. Constitution." ECF No.17-1 at 47, fn. 8. Defendants are thus entitled to a lightened burden, which they have satisfied. See Jenkins, 126 F. Supp. 3d at 277.

POINT VI: PLAINTIFFS' CLAIM AGAINST NYSLA PURSUANT TO NEW YORK EXECUTIVE LAW § 296(1)(a) SHOULD BE DISMISSED

Plaintiffs contend that this Court may exercise supplemental jurisdiction over their N.Y. Executive Law claim, which was only brought against the NYSLA. ECF No. 20 at 43-44; ECF No. 16 at 30. It is unclear as to whether they are asserting that defendants' sovereign immunity claim fails, but they unequivocally fail to address defendants' authority in support of this principle. See ECF No. 17-1 at 47-48. In fact, it is well-established that state law discrimination claims brought against state agencies are barred under the Eleventh Amendment. See Dawkins, 2024 WL 3377938 at *7; Al-Shimary v. State Univ. of New York at Binghamton, 2023 WL 7128861, at *6 (N.D.N.Y. Oct. 30, 2023); Collings v. State Univ. of New York at Cortland, No. 5:24-CV-0534 (GTS/ML), 2025 WL 904649, at *13 (N.D.N.Y. Mar. 25, 2025) (NYSHRL claims against SUNY barred) (citing Heba v. New York State Div. of Parole, 537 F. Supp. 2d 457, 471 (E.D.N.Y. 2007))

(finding sovereign immunity barred claims under the NYSHRL). Consequently, this claim should be dismissed.

POINT VII: PLAINTIFFS' CLAIM PURSUANT TO THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION SHOULD BE DISMISSED

As an initial matter, plaintiffs contend that this Court should not consider the information provided by defendants regarding the reason why plaintiffs' application was denied. ECF No. 20 at 44-45. However, the information defendants cite is either incorporated by reference because it is an attachment to plaintiffs' SAC (ECF No. 16-36) and or is subject to judicial notice (ECF No. 17-1 at 26, fn. 2), both of which can be considered when assessing whether plaintiffs' claim has "facial plausibility." Kweller v. Cnty. of Broome, No. 3:24-CV-1328 (AJB/ML), 2025 WL 3280745, at *2 (N.D.N.Y. Nov. 25, 2025) (the court generally confines itself to the facts alleged in the pleading, documents attached to the complaint or incorporated into it by reference, and matters of which judicial notice may be taken) (citing Goel v. Bunge, Ltd., 820 F.3d 554, 559 (2d Cir. 2016)). On the other hand, plaintiffs' references to records obtained through FOIL, which have not been provided to this Court and are not plead in the SAC, ECF No. 20 at 45, fn. 2-5, should not be considered.

Plaintiffs fail to address defendants' assertion that plaintiffs are not making a facial challenge to the statutory framework empowering the NYSLA to issue or refuse to issue a liquor license; consequently, any such claim should be dismissed. With respect to plaintiffs' as-applied challenge, again, plaintiffs assert that the Court cannot consider the other grounds cited by defendants as to their denial. ECF No. 20 at 46. And again, it is well settled that this Court can consider that information when assessing whether plaintiffs' claim has facial plausibility. Kweller, 2025 WL 3280745 at *2.

Plaintiffs' opposition contends that the SAC has satisfied the Pike balancing test and instructs the Court to disregard defendants' inclusion of the hearing record in support of their motion to dismiss. ECF No. 20 at 47-48. Plaintiffs' requests are again misplaced. This Court can, and should, rely on documents incorporated into the SAC to determine whether plaintiffs have plausibly stated a claim. See Weisshaus v. Port Auth. of New York & New Jersey, 814 F. App'x 643, 647 (2d Cir. 2020) (the district court appropriately relied on documents incorporated into the amended complaint and it did not err when it dismissed the dormant commerce clause claim).

As discussed in defendants' opening brief, plaintiffs' SAC fails to plausibly allege that defendants applied licensing criteria that placed any burden on interstate commerce, let alone demonstrate that the alleged burden on interstate commerce was outweighed by the benefits of the state law setting forth the statutory criteria. The NYSLA made clear that its decision was based on plaintiffs' failure to demonstrate that granting the application would serve the public convenience and advantage—for a few reasons, including the proximity to other stores, declining sales in the region, and plaintiffs' failure to distinguish itself from other package stores, such as offering education, tastings, or providing a product mix from the region. The decision to deny plaintiffs' application was not based—solely or partially—on their refusal to sell a certain percentage of New York made product. Neither plaintiffs' SAC nor their opposition alleges facts demonstrating the “burden” allegedly imposed on commerce is “clearly excessive” in relation to putative local benefits.

Finally, plaintiffs' opposition does not demonstrate that they have satisfied the third prong of the dormant Commerce Clause analysis—extraterritoriality, “the most dormant doctrine in dormant commerce clause jurisprudence.” Vizio, Inc. v. Klee, No. 3:15-CV-00929 (VAB), 2016 WL 1305116, at *9 (D. Conn. Mar. 31, 2016). Plaintiffs do not contend that the SAC has alleged

that the statutory framework “has the practical effect of establishing a scale of prices for use in other states,” constitutes “inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State” or “force[s] an out-of-state merchant to seek regulatory approval in one State before undertaking a transaction in another.” Instead, plaintiffs purportedly contend that in administering New York’s licensing regime, defendants’ actions violated the dormant Commerce Clause by directly controlling commerce occurring wholly outside the boundaries of New York State. ECF No. 20 at 48-49.

The only authority cited in support of their argument is Grand River Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 171-73 (2d Cir. 2005), which is easily distinguishable from the instant matter because it involved an action brought by cigarette manufacturers, importers, and wholesalers against state attorneys-general with respect to escrow statutes and certification statutes that were enacted as part of a master settlement agreement between states and other cigarette companies. Here, pursuant to ABCL § 2, the NYSLA is empowered to determine whether “public convenience and advantage” will be promoted by the issuance of licenses to traffic in alcoholic beverages. See ABCL § 2. The statute makes no mention of prioritizing New York made products and the Board explicitly indicated that it was customary to simply encourage applicants to sell New York made products—there was no requirement that it do so, and providing consumers offerings distinguishable from other stores in the area could be considered in assessing public convenience and advantage. See Full Board video at 14:03-14:37, 17:14-17:35.

CONCLUSION

Defendants respectfully request that the Court dismiss plaintiffs’ SAC in its entirety and with prejudice, and grant such other and further relief as it deems just and equitable.

Dated: Syracuse, New York
February 25, 2026

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
300 S. State Street, Ste. 300
Syracuse, New York 13202

By: s/Aimee Cowan
Aimee Cowan
Assistant Attorney General, of Counsel
Bar Roll No. 516178
Telephone: (315) 448-4800
Fax: (315) 448-4853
Email: aimee.cowan@ag.ny.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 25, 2026, she filed the Defendants' reply memorandum of law by electronically filing with the Clerk of the Court herein, using the CM/ECF system, which is understood to have sent notification of such filing electronically to the following:

Barclay Damon LLP
Attorneys for Plaintiffs
David G. Burch, Jr., Esq.
Jennifer Hopkins, Esq.
125 East Jefferson Avenue
Syracuse, New York 13202

Dated: February 25, 2026

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
300 S. State Street, Suite 300
Syracuse, New York 13202
By: s/ Aimee Cowan
Aimee Cowan, Esq.
Assistant Attorney General
Bar Roll No. 516178
Telephone: (315) 448-4800
Fax: (315) 448-4853