

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BLUE SKY VINEYARDS, LLC, an
Illinois limited liability
company, and Kemner Wine,
Inc. dba THE WINE COUNTRY, a
California corporation,

Plaintiffs,

v.

PAUL TUPY, in his official
capacity as Director of the
California Department of
Alcoholic Beverage Control;
and ROB BONTA, in his
official capacity as Attorney
General of California,

Defendants.

No. 2:26-cv-00564-JAM-JDP

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS**

This matter is before the Court on Defendants' Motion to Dismiss Plaintiffs' Complaint. ECF No. 13, Defendants' Memorandum of Points and Authorities ("Mot."). Plaintiffs oppose the Motion. See ECF No. 14, Plaintiffs' Opposition ("Opp'n"); Defendants filed a Reply and Supplemental Authority. ECF No. 19, Defendants' Reply ("Reply"); ECF No. 20, Defendants' Notice of Supplemental Authority in Support of the Motion to Dismiss. For

1 the reasons detailed below, Defendants' motion is granted in part
2 and denied in part.¹

3 I. OPINION

4 Plaintiff Blue Sky Vineyards, an Illinois Winery, and
5 Plaintiff The Wine Country, a licensed retailer in Signal Hill,
6 California, challenge California's regulatory scheme for alcohol
7 sales, alleging it unconstitutionally controls out-of-state
8 licensed wineries through its three-tier system "by allowing in-
9 state wineries, but not out-of-state wineries, to sell wine
10 directly to California retailers" in violation of both the
11 dormant Commerce Clause and the Privileges and Immunities Clause
12 of the United States Constitution. See ECF No. 1, Compl.
13 Defendants Paul Tupy, in his official capacity as Director of the
14 Department of Alcoholic Beverage Control, and Rob Bonta, in his
15 official capacity as Attorney General of California, move to
16 dismiss Plaintiffs' complaint under Federal Rules of Civil
17 Procedure 12(b)(1) and 12(b)(6). The Court first addresses
18 Defendants' 12(b)(1) motion as to Count Two before turning to
19 Defendants' 12(b)(1) and 12(b)(6) motion as to Count One.

20 A. Count Two is Dismissed for Lack of Standing

21 In their second cause of action, Plaintiffs, two
22 corporations, seek relief under Article IV, Section 2, Clause 1
23 of the Constitution. See Compl. ¶¶ 7-9, 41-45. The Privileges
24 and Immunities Clause, however, only affords protections to
25 "[t]he Citizens of each State." U.S. Const. Art. IV, § 2, cl.
26 1. Without citing any authority, Plaintiffs argue "[w]hether an

27
28 ¹ This motion was determined to be suitable for decision without
oral argument. See ECF No. 21; E.D. Cal. L.R. 230(g).

1 entity is covered by a constitutional provision is a merits
2 question, not a standing question . . . ,” but “acknowledge that
3 neither Plaintiff is a natural person,” and request the Court
4 allow them to amend Count Two. See Opp’n at 10.

5 Standing is “the threshold question in every federal case,
6 determining the power of the court to entertain the suit.”
7 Warth v. Seldin, 422 U.S. 490, 498 (1975). Since it is well-
8 established “a corporation cannot be deemed a citizen within the
9 meaning of the clause of the Constitution which protects the
10 privileges and immunities of citizens . . . ,” Western Turf
11 Ass’n v. Greenberg, 204 U.S. 359, 363 (1907), the Court agrees
12 with Defendants – Plaintiffs lack standing to bring this claim.
13 See Mot. at 8; Fed. R. Civ. P. 12(b)(1). Accordingly,
14 Defendants’ motion to dismiss the second cause of action is
15 granted, without prejudice. Accord Hemphill v. Orloff, 277 U.S.
16 537, 548-550 (1928); Metropolitan Life Ins. Co. v. Ward, 470
17 U.S. 869, 884 (1985) (O’Connor, J., dissenting) (“Appellants
18 rely on the Equal Protection Clause because, as corporations,
19 they are not ‘citizens’ protected by the Privileges and
20 Immunities Clause of the Constitution.”); Fed. R. Civ. P. 15;
21 Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Cap., LLC v.
22 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

23 B. Defendants’ Motion to Dismiss Count One is Denied

24 Defendants also move to dismiss Count One under Rule
25 12(b)(1), arguing “Plaintiffs lack standing because their
26 Complaint does not establish redressability,” and under Rule
27 12(b)(6), arguing they have failed to state a claim because it
28 is well-established California’s three-tier regulatory system

1 does not violate the dormant Commerce Clause.

2 1. Defendants' 12(b)(1) Motion

3 To have standing, "[P]laintiff[s] must have (1) suffered an
4 injury-in-fact that is (2) traceable to the defendant's
5 challenged conduct, and (3) it must be likely, as opposed to
6 merely speculative, that the injury will be redressed by a
7 favorable decision." Day v. Henry, 152 F.4th 961, 967 (9th Cir.
8 2025). "The party invoking federal jurisdiction bears the
9 burden of establishing these elements," and "[a]t the pleading
10 stage, general factual allegations of injury resulting from the
11 defendant's conduct may suffice" Lujan v. Defenders of
12 Wildlife, 504 U.S. 555, 560-61 (1992) (citations omitted).
13 "Plaintiffs must [] show that the relief they seek is 'within
14 the district court's power to award.'" Day, 152 F.4th 967
15 (quoting Juliana v. United States, 947 F.3d 1159, 1170 (9th Cir.
16 2020)). Indeed, "[i]f 'a favorable judicial decision would not
17 require the defendant to redress the plaintiff's claimed injury,
18 the plaintiff cannot demonstrate redressability unless she
19 adduces facts to show that the defendant or a third party are
20 nonetheless likely to provide redress as a result of the
21 decision.'" Id. (quoting M.S. v. Brown, 902 F.3d 1076, 1083
22 (9th Cir. 2018)).

23 Defendants argue "Plaintiffs' alleged injury . . . would
24 not be remedied even if the Court granted the relief they seek"
25 because they only challenge specific portions of the statute,
26 and other, unchallenged portions of the three-tier system will
27 continue to prevent Plaintiffs from obtaining the relief they
28 seek. Mot. at 1-2, 4-7; Reply at 1-3. Plaintiffs counter that

1 they have adequately pled redressability, especially since their
2 "burden . . . is 'relatively modest,'" and they seek broad,
3 injunctive relief. See Opp'n at 2-7 (quoting Tucson v. City of
4 Seattle, 91 F.4th 1318, 1325 (9th Cir. 2024)). Plaintiffs also
5 rely on the generous language in the recent Day decision, which
6 the Court agrees supports Plaintiffs' position regarding
7 redressability. Id. at 6. In Day, plaintiffs challenged
8 Arizona's "three-tier system [] regulat[ing] the sale and
9 distribution of alcohol." 152 F.4th 961 (9th Cir. 2025).
10 Although the plaintiffs were consumers seeking to ship out of
11 state wine directly to their homes instead of having to use in-
12 state retailers to facilitate the shipments, they raised similar
13 issues to those present here in questioning a substantially
14 similar three-tier regulatory scheme. Id. The Ninth Circuit
15 rejected the district court's suggestion that plaintiffs were
16 unlikely to demonstrate redressability, noting that inconsistent
17 or incomplete challenges to the regulatory scheme at issue did
18 not extinguish standing because "the district court was capable
19 of granting at least some relief." Id. at 967-68. Since
20 plaintiffs had, at points, asked the court to "enjoin[]
21 enforcement of the [entire] statutory scheme as applied to all
22 liquor retailers and wholesalers inside and outside of Arizona,"
23 the Ninth Circuit found "the district court was capable of
24 granting at least some relief, and regardless of whether that
25 relief—or any other possible relief—might ultimately prove
26 appropriate on the merits, [and so] the redressability
27 requirement of standing had been met." Id. (emphasis removed).
28 Although Defendants attempt to distinguish Day by focusing on

1 one sentence in the Ninth Circuit's analysis, this Court is
2 bound by its general analysis and favorable language broadly
3 interpreting standing and redressability. See Mot. at 4-5;
4 Reply at 1-3; 152 F.4th at 967-68. For these reasons,
5 Defendants' 12(b)(1) motion as to Count One is denied.

6 2. Defendants' 12(b)(6) Motion

7 Defendants also move to dismiss Count One under Rule
8 12(b)(6), arguing Plaintiffs' claims fail because "an extensive
9 body of case law upholds three-tier systems of alcohol
10 distribution consistent with the Commerce Clause...[and] the
11 Complaint does not establish the basic elements of a dormant
12 Commerce Clause claim." See Mot. at 8-15. Nearly all the cases
13 cited by Defendants in support of their argument that the three-
14 tier system is constitutionally valid decided this issue on
15 summary judgment rather than a motion to dismiss. The two step
16 test that governs whether California's exercise of its power
17 under Section 2 of the Twenty-First Amendment runs afoul of the
18 dormant Commerce Clause requires evidence that the state law is
19 not discriminatory and has no "legitimate nonprotectionist"
20 justification. See Mot. at 9; Opp'n at 14. Such factual
21 questions cannot be decided on the pleadings at this early stage
22 of the case and dismissal under Rule 12(b)(6) is improper here.
23 Balistreri v Pacifica Police Dep't., 901 F.2d. 696, 699 (9th
24 Cir. 1990) (A Rule 12(b)(6) dismissal is proper only where there
25 is either a "lack of a cognizable legal theory" or "the absence
26 of sufficient facts alleged under a cognizable legal theory.")

27 The issue on a motion to dismiss for failure to state a
28 claim is not whether the claimant will ultimately prevail but

1 whether the claimant is entitled to offer evidence to support
2 the claims asserted. Gilligan v. Jamco Dev. Corp., 108 F.3d
3 246, 249 (9th Cir. 1997). All allegations of the complaint must
4 be accepted as true. Cruz v. Beto, 405 U.S. 319, 322. The court
5 is bound to give the plaintiff the benefit of every reasonable
6 inference to be drawn from the "well-pleaded" allegations of the
7 complaint. Retail Clerks Int'l Ass'n v. Schermerhorn, 373 U.S.
8 746, 753 n.6 (1963).

9 The burden is on the moving party to prove beyond doubt
10 that the plaintiff can prove no set of facts in support of his
11 claim which would entitle him to relief. Conley v. Gibson, 355
12 U.S. 41, 45-46 (1957); see also NL Indus., Inc. v. Kaplan, 792
13 F. 2d 896, 898 (9th Cir. 1986). The Court finds that Defendants
14 have not satisfied their burden as the moving party here.
15 Accordingly, their motion to dismiss Count 2 is denied.

16 II. ORDER

17 For the reasons set forth above, the Court GRANTS IN PART
18 and DENIES IN PART Defendants' Motion to Dismiss. The motion is
19 denied as to Count One and granted without prejudice as to Count
20 Two.

21 If Plaintiffs elect to amend Count Two, they shall file
22 their amended complaint within twenty days of the date of this
23 Order. Defendants shall file their response to the amended
24 complaint within twenty days thereafter.

25 IT IS SO ORDERED.

26 Dated: September 15, 2026

27 
28 JOHN A. MENDEZ,
SENIOR UNITED STATES DISTRICT JUDGE