

**STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN LIQUOR CONTROL COMMISSION**

In re: Wine Dock Liquor & Fine Wine, Inc.  
d/b/a: Wine Dock Liquor  
24421 Jefferson Ave.  
Saint Clair Shores, MI 48080-1318

**RECEIVED**

OCT 11 2018

Complaint No: CV-501565  
\_\_\_\_\_ /

MI LIQUOR CONTROL COMMISSION  
OFFICE OF THE CHAIRPERSON

**REQUEST FOR DECLARATORY RULING**

NOW COMES Wine Dock Liquor & Fine Wine, Inc. ("Wine Dock"), a Michigan corporation, pursuant to Section 63 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.263, and the applicable rules of the Michigan Liquor Control Commission (the "Commission"), Rules 436.1971 – 436.1975, and hereby requests a declaratory ruling as to the applicability of certain statutes administered by the Commission to the actual state of facts described herein.

**I. INTRODUCTION**

Wine Dock brings this Request for Declaratory Ruling to the Commission because the Commission issued against Wine Dock a multi-count Complaint dated July 10, 2018. (See Exhibit A, Complaint.) The Complaint contends that Wine Dock: (1) utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer contrary to MCL 436.1203(15); (2) allowed a third-party to pay fees associated with the delivery of wine to the home or designated location of a consumer contrary to MCL 436.1203(15)(d); and (3) allowed Direct Wines, Inc. ("DWI") to derive use or benefit from Wine Dock's license contrary to Rule 436.1041(1).

Wine Dock engages DWI, a Delaware corporation, to provide certain media and marketing services. Those services do not include the facilitation of the delivery of wine, or the actual delivery of wine to Wine Dock customers, nor do the services include payment of fees associated with delivery of wine to Wine Dock customers. Wine Dock engages UPS and FedEx to facilitate the delivery of wine to its customers, and to make the actual delivery of wine to its customers. (See Exhibit B, Affidavit of Rani Sheena; ¶ 4). The Complaint is based on erroneous assumptions and conclusions and a misinterpretation and misapplication of a new statute, 2016 PA 506.<sup>1</sup>

Because the Complaint relates to other complaints issued against parties with which Wine Dock contracts, as well as a Cease and Desist letter issued against DWI by the Attorney General, we

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<sup>1</sup> The US District Court for the Eastern District of Michigan recently held that the statute in question, 2016 PA 506, MCL 436.1203, is unconstitutional in certain regards. *Lebamoff Enterprises v Snyder*, Case No 17-10191, 9-28-2018.

respectfully request that the Commission consider these matters together, apply the law to the facts, determine that DWI is not subject to licensure by the Commission, and that the Commission rescind and withdraw the Complaint issued against Wine Dock.

## II. STATEMENT OF FACTS

1. Wine Dock is a licensed retailer in the State of Michigan and holds a Specially Designated Merchant (“SDM”) license, License #275000, a Specially Designated Distributor (“SDD”) license, License #274999, and associated permits, all issued by the Commission. (See Exhibit B, Affidavit of Rani Sheena; ¶ 3.)
2. Wine Dock customers may order wine products from its licensed business via the internet and those customers pay Wine Dock for the products. (See Exhibit B, Affidavit of Rani Sheena; ¶ 5.)
3. Wine Dock’s deliveries to its customers are carried out by UPS and FedEx. (See Exhibit B, Affidavit of Rani Sheena; ¶ 4.)
4. While Wine Dock engaged DWI for certain media and marketing activities, DWI is not involved in the operation of Wine Dock’s licensed business. (See Exhibit B, Affidavit of Rani Sheena; ¶ 6.)

## III. RELEVANT STATUTES AND RULES

1. Michigan Liquor Control Code of 1998 (the “Code”), 1998 PA 58, MCL 436.1001, *et seq*, particularly Section 203, MCL 436.1203 and subsections (15), (17), and (25)(m) set forth below:

(15) A retailer that holds a specially designated merchant license located in this state may use a third party facilitator service by means of the internet or mobile application to facilitate the sale of beer or wine to be delivered to the home or designated location of a consumer as provided in subsection (12) or this subsection, and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer that holds a specially designated merchant license located in this state, if all of the following conditions are met:

(a) If the third party facilitator service delivers beer or wine under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the beer or wine is at least 21 years of age.

(b) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not have a direct or indirect interest in the third party facilitator service.

(c) A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not aid or assist a third party facilitator service by gift, loan of money or property of any

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Request for Declaratory Ruling  
Wine Dock Liquor & Fine Wine, Inc.

description, or other valuable thing as defined in section 609, and a third party facilitator service does not accept the same.

(d) The retailer or consumer pays the fees associated with deliveries provided for under this subsection.

(e) The third party facilitator service offers services for all brands available at the retail location.

\* \* \*

(17) A third party facilitator service shall not deliver beer, wine, or spirits to a consumer under subsection (15) or (16), as applicable, and shall not facilitate the sale of beer, wine, or spirits under subsection (15) or (16), as applicable, unless it applies for and is granted a third party facilitator service license by the commission. The commission may charge a reasonable application fee, initial license fee, and annual license renewal fee. The commission shall establish a fee under this subsection by written order.

\* \* \*

(25) As used in this section: . . .

(m) "Third party facilitator service" means a person licensed by the commission to do any of the following:

(i) Facilitate the sale of beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.

(ii) Facilitate the sale of spirits to a consumer as provided in subsection (16) on behalf of a retailer that holds a specially designated distributor license located in this state.

(iii) Deliver beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.

(iv) Deliver spirits to a consumer as provided in subsection (16) on behalf of a retailer that holds a specially designated distributor license located in this state.

2. Commission Rule 436.1041(1), set forth below:

A licensee or an applicant for a license shall not obtain or attempt to obtain a license for the use or benefit of another person whose name does not appear on the license. In addition, a licensee shall not allow a person whose name does not appear on the license to use or benefit from the license.

3. Michigan Administrative Procedures Act, 1969 PA 306, MCL 24.201, *et seq.*

#### IV. DISCUSSION

DWI works with internet based wine clubs including WSJwine, Virgin Wines, and Laithwaite's Wine, to provide media and marketing services. Those wine clubs offer portals to Michigan consumers giving them the ability to purchase wines from Wine Dock that are otherwise not generally available in Michigan. Wine Dock takes the orders and fulfills those orders utilizing Michigan's 3-tier system of wine distribution by placing an order with a licensed wholesaler, which places an order with a licensed outstate seller of wine. Upon receiving the ordered wine from its wholesaler, Wine Dock pays UPS or FedEx to deliver the wine to customers.

DWI provides marketing and media services to Wine Dock. DWI has no control over Wine Dock's operation or business. DWI's marketing services do not extend to all of the brands that are available for purchase at Wine Dock's retail establishment. Wine Dock is free to accept or reject any wine order the Wine Dock receives through any wine club portal.

With respect to wine distribution, MCL 436.1203 defines a "third party facilitator service" at Subsection (25)(m) to mean a person licensed by the commission to do any of the following:

(i) *Facilitate* the sale of beer or wine to a consumer *as provided in subsection (15)* on behalf of a retailer that holds a specially designated merchant license located in this state.

\* \* \*

(iii) *Deliver beer or wine to a consumer as provided in subsection (15)* on behalf of a retailer that holds a specially designated merchant license located in this state.

MCL 436.1203(25) (emphasis added). This section of the law refers back to Subsection (15), which states that an SDM licensed retailer may:

use a third party facilitator service by means of the internet or mobile application to *facilitate* the sale of beer or wine to be delivered to the . . . consumer . . . and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer . . . if *all of the following conditions are met*:

(a) *If the third party facilitator service delivers beer or wine under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the beer or wine is at least 21 years of age.*

\*\*\*

(e) The third party facilitator service *offers services for all brands available at the retail location.*

MCL 436.1203(15) (emphasis added). Wine Dock uses USP and FedEx to facilitate the delivery of wine, and make the actual delivery of wine to Wine Dock's customers. USP and FedEx are required to deliver the wine to the desired location, conduct age verification on the recipient of the wine, maintain accurate records of the delivery, and confirm the delivery for Wine Dock in accordance with MCL 436.1203(3). DWI has nothing to do with the delivery of Wine Dock's wine products, or the payment for the delivery of Wine Dock's wine products, all of which are controlled by and paid for, by Wine Dock. In addition, Wine Dock's retail location includes brands that the subject wine clubs do not include with their portals. Wine Dock offers many brands for purchase in its store that are desired by its in-store customers, but are not listed in the wine clubs' portals. The brands offered through the wine clubs' portals are often different and are many times the products of smaller wineries. DWI's marketing and media services do not extend to all of the brands available for purchase at Wine Dock's retail location. Thus, the necessary "condition" in Subsection (15) for a third party facilitator to offer services for all brands available at a retailer's location is not met.

It is also noteworthy that the Legislature failed to define "facilitate" in connection with this new "third party facilitator" license. "Facilitate" can be read extremely broadly and that seems to be what the Commission is doing in issuing the Complaint against Wine Dock as well as issuing other similar complaints. The broad reading of "facilitate the sale of beer and wine to consumers" "by means of the internet or mobile application" would arguably also encompass any internet search engine that helps a consumer identify a retailer selling a particular wine product thereby "facilitating" a sale, email marketing company, or an online newspaper that includes advertising for a retailer with certain wine products included in the advertisement thus "facilitating" a sale. The slippery slope is endless and the Commission should not attempt to regulate commerce in this manner.

Finally, Wine Dock is not allowing DWI to derive use or benefit of Wine Dock's SDM license in violation of Rule 436.1041(1). DWI simply provides a variety of marketing and media services to Wine Dock much as other media and marketing companies (including newspapers, magazines, and trade associations) provide advertising and marketing services to Wine Dock and other retailers in this state. While the services performed relate to promoting wine products, a conclusion that that juxtaposition means there is a use or benefit violation is wrong.

## **V. DECLARATORY RULING REQUEST**

Based on the actual state of facts described herein and the applicability of the referenced statutes and rules the Commission administers to those facts, Wine Dock requests that the Commission declare and rule that the July 10, 2018 Complaint issued against Wine Dock be rescinded and withdrawn because: (1) Wine Dock is not using an unlicensed third-party to facilitate delivery of wine to its customers; (2) Wine Dock is not allowing an unlicensed third-party to pay fees associated with the delivery of wine to its customers; and (3) Wine Dock is not allowing DWI to derive use or benefit from its SDM license.

Michigan Liquor Control Commission  
Request for Declaratory Ruling  
Wine Dock Liquor & Fine Wine, Inc.

Respectfully submitted,

JPHOWE, PLLC

Dated: October 11, 2018

By:



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J. Patrick Howe (P68634)  
JPHOWE, PLLC  
280 N. Old Woodward, Ste. 12  
Birmingham, Michigan 48009  
(248) 385-3112 (phone)  
(888) 450-1682 (fax)

Michigan Liquor Control Commission  
Request for Declaratory Ruling  
Wine Dock Liquor & Fine Wine, Inc.

**EXHIBIT A**



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

**NOTICE OF HEARING ON COMPLAINT**  
(Authorized by M.A.C. R436.1909)

September 14, 2018

To: **WINE DOCK LIQUOR & FINE WINE, INC.**  
D/B/A WINE DOCK LIQUOR  
24421 Jefferson Ave,  
Saint Clair Shores, MI 48080-1318

**Complaint No: CV-501565**

The Michigan Liquor Control Commission (MLCC) has scheduled a violation hearing on the enclosed Complaint filed against you which alleges a violation of the laws of the State of Michigan, or rules of the Commission, or both, with respect to the operation of your establishment, for:

**At:** MLCC Lansing District Office  
525 W Allegan Street  
Lansing, MI 48909

**On:** Wednesday  
October 17, 2018  
10:00 AM

Administrative rule R 436.1913 requires a licensee (individual, co-licensee, partner, corporate officer, general partner, etc.) to personally appear at the hearing. You may bring any exhibits or witnesses you wish to have testify on your behalf. Failure to attend this hearing may result in actions taken against your license(s), including immediate suspension, at the discretion of the Hearing Commissioner, under the authority granted by Section 903 of the Liquor Control Code, 1998 PA 58, MCL 436.1903, as amended.

You have the right to have an attorney represent you. The attorney must file a written appearance before, or at, the time of the hearing. Your attorney can mail or fax their appearance to this office prior to the date of hearing. **Please note that under administrative rule R 436.1927(1), "all documents and papers pertaining to a hearing or appeal hearing shall be filed at the Lansing Office of the Commission."**

Any request for postponement of these proceedings must conform to administrative rule R 436.1931(1), which states, "Requests for postponements shall be made in writing not less than 2 working days before the violation hearing or appeal hearing date unless waived by a Commissioner." A Commissioner or duly authorized agent of the Commission may grant your written postponement request. Please direct any such requests to Lori Schrader at (517) 284-6267, or by fax at (517) 763-0053.

If you have any questions regarding the hearing process, please contact the Hearings and Appeals Section between the hours of 8:00 AM and 5:00 PM, Monday through Friday, at **(517) 284-6270**.

Sincerely,

Julie Wendt, Director  
Executive Services Division

JW: RC

Enclosures

cc:





State of Michigan  
Department of Licensing and Regulatory Affairs  
LIQUOR CONTROL COMMISSION  
525 W. Allegan St.  
P.O. Box 30005  
Lansing, Michigan 48909-7505

Complaint No. 8-CV-501565  
Business ID No. 244951  
L-8

In Re: Wine Dock Liquor & Fine Wine, Inc.  
d/b/a Wine Dock Liquor  
24421 Jefferson Avenue  
Saint Clair Shores, MI 48080-1318

Date: July 10, 2018

SDD SDM SS(AM & PM)

### COMPLAINT

This Complaint alleges that the licensee or the licensee's agent, clerk or employee:

1. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: October 23, 2017 sale of HJ Fabre Malbec Reserve wine through WSJ Wine website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
2. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: October 31, 2017 sale of Mediterranean White wine through WSJ Wine website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
3. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: November 20, 2017 sale of California Goldstrike Cabernet Sauvignon wine through WSJ Wine website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
4. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: October 23, 2017 sale of Collezione di Pablo Chanti wine through Laithwaites Wine website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
5. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: October 31, 2017 sale of Via Castilla Tempranillo wine through Laithwaites Wine website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
6. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: November 30, 2017 sale of Deloach Chalk Hill Chardonnay wine through Laithwaites Wine website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
7. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: October 23, 2017 sale of Pillastro Primitiva wine through Virgin Wines website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
8. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: October 31, 2017 sale of Lobo Falcao wine through

Virgin Wines website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).

9. utilized the services of an unlicensed third-party to facilitate the delivery of wine to the home or designated location of a consumer, specifically: November 20, 2017 sale of Bridge Lane Dry Rose' wine through Virgin Wines website, contrary to Section 203(15) of the Michigan Liquor Control Code, MCL 436.1203(15).
10. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: October 23, 2017 sale of HJ Fabre Malbec Reserve wine through WSJ Wine website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
11. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: October 31, 2017 sale of Mediterranean White wine through WSJ Wine website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
12. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: November 20, 2017 sale of California Goldstrike Cabernet Sauvignon wine through WSJ Wine website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
13. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: October 23, 2017 sale of Collezione di Pablo Chanti wine through Laithwaites Wine website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
14. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: October 31, 2017 sale of Via Castilla Tempranillo wine through Laithwaites Wine website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
15. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: November 30, 2017 sale of Deloach Chalk Hill Chardonnay wine through Laithwaites Wine website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
16. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: October 23, 2017 sale of Pillastro Primitiva wine through Virgin Wines website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
17. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: October 31, 2017 sale of Lobo Falcao wine through Virgin Wines website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
18. allowed Direct Wines to pay the fees associated with the delivery of wine to the home or designated location of a consumer, specifically: November 20, 2017 sale of Bridge Lane Dry Rose' wine through Virgin Wines website, contrary to Section 203(15)(d) of the Michigan Liquor Control Code, MCL 436.1203(15)(d).
19. allowed Direct Wines, whose name does not appear on the license, to derive use or benefit from the license, contrary to Rule 436.1041(1).

The licensee may elect to appear at a hearing at which time testimony may be taken and the matter adjudged or the licensee may elect to acknowledge the validity of the complaint and thereby authorize the entry of an order without a formal hearing, which order may assess such penalties as are provided by Section 903 of the Liquor Control Code. If a licensee elects to acknowledge the complaint, the licensee may include, on a separate sheet of paper, any explanation or mitigating circumstances which the licensee believes should be considered in disposing of the violation.

NOTE: In the event the licensee decides to waive a hearing and acknowledge the facts of this complaint, the original copy of this waiver and acknowledgment must be signed by the individual licensee, or at least one co-licensee, or at least one partner of a partnership licensee, or at least one officer of a corporate or club licensee, or at least one member of a limited liability company, and returned to the Michigan Liquor Control Commission, Hearings and Appeals Section, 525 W. Allegan, P.O. Box 30005, Lansing, Michigan 48909-7505.

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### **WAIVER OF HEARING & ACKNOWLEDGMENT OF COMPLAINT**

I (we) hereby voluntarily acknowledge the charges as stated in this complaint, I (we) hereby waive hearing, representation by an attorney and appearance of witnesses at such hearing, I (we) hereby voluntarily consent to the reading of the Violation Report submitted by the law enforcement agency and consent to such penalty as may be deemed appropriate from the facts stated therein. I (we) voluntarily consent to my (our) previous violation record, if any, being reviewed and understand it may be a factor in the determination of the penalty imposed. No representations, expressed or implied, have been made by anyone concerning what the penalty shall be.

\* Signature of Licensee: \_\_\_\_\_ Date: \_\_\_\_\_

Print or Type: \_\_\_\_\_  
Name Title

You must include your current telephone number and email address so that the Liquor Control Commission can contact you.

Current Telephone: \_\_\_\_\_ Current email: \_\_\_\_\_

**\* Under the authority set forth in R 436.1913, you must meet one of the following conditions in order to sign this acknowledgment of complaint. Please place a checkmark in the box next to the condition below that describes your authority to sign, and include your associated title above.**

- The individual licensee. (Example: John Doe, Licensee)
- A co-licensee. (Example: John Doe, Co-Licensee)
- A partner of a partnership licensee. (Example: John Doe, Partner)
- An officer of a corporate licensee. (Example: John Doe, President, Secretary, etc.)
- A member or manager of a limited liability company. (Example: John Doe, Manager)

**\* If you do not meet one of the conditions outlined above, this acknowledgment will not be accepted and the matter will be scheduled for a hearing.**

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For Liquor Control Commission use only

Michigan Liquor Control Commission  
Request for Declaratory Ruling  
Wine Dock Liquor & Fine Wine, Inc.

**EXHIBIT B**

**AFFIDAVIT OF RANI SHEENA**

**RE: NOTICE OF HEARING ON COMPLAINT FILED BY THE MICHIGAN LIQUOR CONTROL COMMISSION TO WINE DOCK LIQUOR AND FINE WINE, INC. d/b/a WINE DOCK LIQUOR IDENTIFIED AS COMPLAINT #8-CV-501565**

I, **RANI SHEENA**, being first duly sworn upon oath, hereby depose and state as follows:

1. I am in excess of twenty-one (21) years of age, and I have personal knowledge of the facts set forth in this Affidavit and know same to be true. If sworn to testify, I would testify competently and under penalty of perjury as to the matters set forth hereinbelow.

2. I am proprietor of Wine Dock Liquor and Fine Wine, Inc. d/b/a Wine Dock Liquor (hereinafter "Wine Dock").

3. Wine Dock has been issued by the State of Michigan SDD license #274999, and SDM license #275000, under the name Wine Dock Liquor and Fine Wine, Inc. d/b/a Wine Dock Liquor, located at 24421 Jefferson Avenue, Saint Clair Shores, Michigan 48080, SDM SS (AM PM). Copy of Wine Dock State of Michigan wholesale license attached hereto.

4. Wine Dock's deliveries to consumers have been carried out by UPS and FedEx.

5. Wine Dock has never allowed or authorized Direct Wines to pay fees associated with the delivery of wine to any consumer that is a customer of Wine Dock's in the State of Michigan.


6. Direct Wines has nothing to do with the operation of Wine Dock's business in the State of Michigan.

FURTHER AFFIANT SAYETH NOT.



RANI SHEENA

SUBSCRIBED AND SWORN TO  
before me this 2 day  
of October 2018.

  
Notary Public

